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Pentagon Memo Bares U.S. Viet Control

By Jack Anderson ^{B15}

Still—secret portions of the controversial Pentagon Papers disclose that the Johnson administration felt it could virtually dictate the hiring and firing of top-level South Vietnamese officials.

This revelation could prove acutely embarrassing to the U.S. government, which has repeatedly insisted it is involved in Vietnam to protect the South Vietnamese from domination by an outside power.

The Johnson administration's arrogant attitude is disclosed in a memo to the President from a high-ranking study group headed by LBJ's second Defense Secretary, Clark Clifford.

The memo has not appeared in any of the published excerpts and has been censored in the official version released by the Pentagon.

Here is what the censored memo says: "We should solicit Ambassador (Ellsworth) Bunker's views on the desirability of replacing the Prime Minister. If he is to be replaced, we should agree on his successor beforehand, in consultation with Thieu and Ky."

The memo reveals that this same attitude persisted towards other Vietnamese officials and military officers. It calls for the "relief of a specified list of corrupt officials now... Incompetent province chiefs who have plagued our

efforts in the past must be removed."

The memo adds that "incompetent ARVN (Vietnamese Army) officers must be removed, beginning with a specific list that should be made available by MACV." The letters MACV refer to the U.S. Command, which was to decide which Vietnamese officers should stay and which should go.

"We should not hesitate," the memo says, "to make our desires known and back them up by refusing to provide support for the incompetent. For key commanders, we should require the right of prior approval on a secret and discreet basis. The precise tools of leverage should be left to the U.S. Mission."

Political Censorship

The censored memo, clearly deals with political, not security, matters. Yet the Pentagon insists that all the omissions from its published version of the Pentagon Papers involved vital national security matters.

We have compared the official version with still-secret segments of the uncensored text. We can report that the deletions, like the Clifford memo, involve matters likely to embarrass the government, not threaten security.

Another example is a derogatory comment about India, which might make it hot for the U.S. ambassador in New

Delhi but would hardly endanger this nation's security.

It occurs during a discussion of diplomatic and military alternatives in Southeast Asia. "A further possibility," the document states, "would be to seek to enlist India more deeply in the Cambodian situation. This is worth trying, but the Indians are a weak reed for action or for effective diplomatic dramatization."

Also left out is a statement by former State Secretary Dean Rusk that the U.S. would have no alternative but the use of nuclear weapons if China became involved in our war in Southeast Asia. The statement occurs in a cable to Washington following a meeting between Rusk and South Vietnamese's then-Premier Nguyen Khanh in April, 1964.

"The Secretary said he wished to emphasize" that "... if escalation brought about a major Chinese attack, it would also involve the use of nuclear arms. Many free world leaders would oppose this.

"Chiang Kai-shek had told him fervently he did, and so did U Thant. Many Asians seemed to see an element of racial discrimination in use of nuclear arms; something we would do to Asians but not to Westerners."

Khanh replied he certainly had no quarrel with American use of nuclear arms, noted that decisive use of Atomic

bombs on Japan had in ending war saved not only American but also Japanese lives. One must use the force one had; if Chinese used masses of Humanity, we would use superior fire power."

Footnote: Some of the uncensored documents, we have learned, will be included in Alaska Sen. Mike Gravel's collection of Pentagon Papers, to be published by the Beacon Press.

Saving Postage

California Congressman Peter McCloskey's campaign to challenge President Nixon in the GOP primaries has always been a little shaky financially.

Still, we were surprised to discover that the personable McCloskey has been mailing campaign literature in congressional envelopes clearly franked "PUBLIC DOCUMENTS OFFICIAL BUSINESS." The envelopes contain colorful pamphlets asking: "Will YOU join the McCloskey Volunteers—and help 'Pete' now!"

"Pete" apparently needs some help interpreting the federal postal laws. Campaign mailings clearly are prohibited, and violators are subject to a \$300 fine. At McCloskey's office, an embarrassed aide said: "It's our error. About five of them went out in franked envelopes."

Bell-McClure Syndicate

Date 10-16-71

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More Cambridge Witnesses Subpoenaed on War Study

By Sanford J. Ungar
Washington Post Staff Writer

CAMBRIDGE, Mass., Oct. —The Justice Department, stepping up its investigation into how the Pentagon papers were disclosed earlier this year, has subpoenaed another group of people from this academic community to appear before a federal grand jury in Boston.

Among those called to testify next Thursday is Howard Webber, director of the University Press and the Massachusetts Institute of Technology. MIT Press, originally planned to publish a version of the secret Vietnam war study provided by Sen. Mike Gravel (D-Alaska), but canceled those plans under pressure from a faculty advisory committee.

Webber has agreed to answer the subpoena, sources here said, but requested that his appearance be delayed until later this month.

Noam Chomsky, a professor of linguistics at MIT, who has been the leading opponent of American policy in Southeast Asia, also received a subpoena this week.

Chomsky, labeling the grand jury investigation "political repression," said today, "I'm certainly not going to go out of my way to help them."

Chomsky has retained New York lawyer Leonard Boudin to represent him in fighting the subpoena. Boudin also represents Daniel Ellsberg, the MIT researcher charged with illegal possession and conversion of the secret Pentagon study.

Others called to testify before the grand jury in federal court include:

- Leonard S. Rodberg, a staff assistant to Gravel whose attempt to quash his subpoena was turned down earlier this week by U. S. District Court Judge W. Arthur Garrity Jr.

Gravel is expected to ask Garrity early next week to reconsider his ruling on the Rodberg subpoena.

- Richard Falk, a professor of international law at Princeton University who also was defeated in his attempt to fight the subpoena.

Judge Garrity this week ruled against Falk's contention that he is entitled to the same First Amendment protection as members of the press.

- Sam Popkin, an assistant professor of government at Harvard University who was called before the grand jury in August, but dismissed after only a few questions. He has been recalled.

- Stewart Perry, a neighbor of Ellsberg's in Cambridge and a fellow at the Center for Community Economic Development in Cambridge. Perry originally was subpoenaed in August, but invoked a constitutional privilege against testifying.

It also was learned here today that the grand jury had already questioned Carter de Paul Jr., who was identified as an acquaintance of Ellsberg's brother-in-law. Sources said that de Paul had testified "for a couple minutes" more than a month ago and has been called again.

Also subpoenaed last month was Ralph Stavins, a staff member at the Institute for Policy Studies in Washington, who wrote and edited a book based in part on the Pentagon papers.

Like Falk, Stavins was unsuccessful in extending to his own case journalistic privilege against testifying before the grand jury. When he appeared on Sept. 28, however, he was excused after refusing to answer questions.

The new phase of the grand jury investigation in Boston apparently will be conducted by attorneys David R. Nissen and Warren P. Reese of the Justice Department's internal security division.

Nissen and Reese led the Los Angeles grand jury investigation which resulted in the indictment against Ellsberg.

Although officials have declined any comment, some of the new subpoenas apparently are connected to the publication of Gravel's copy of the Pentagon papers here next week by Beacon Press. The dust jacket of the four-volume Beacon edition includes a recommendation of the book to the public by Chomsky.

Garrity's ruling last Monday prohibited grand jury questioning of anyone about a June 29 midnight Senate Public Works subcommittee meeting at which Gravel read portions of his copy of the Pentagon papers.

But the judge specifically said that inquiry into republication.

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Ellsberg Will See Notes

LOS ANGELES— Daniel Ellsberg, the man who leaked the Pentagon papers, won a legal skirmish Monday when the government was ordered to turn over any notes it made on contents of 31 boxes of his belongings seized from a warehouse.

Attorneys for the former Rand Corp. employe, who admits he gave the secret Vietnam War documents to newspapers, contend the seizure of the boxes Sept. 20 was illegal and hope to bar any evidence obtained from them.

They asked for the notes, and for an official, independent inventory of the contents of the cartons, so that "if in the future we want to be able to trace tainted evidence to them, we will have a credible list of what was in them," his attorney said.

U.S. District Court Judge Matthew Byrne Jr. ordered the government and Ellsberg's lawyer, Charles Nesson, to agree on an independent party to inventory the boxes, which the government returned to the Bekins Moving and Storage Co. in Beverly Hills Sept. 23.

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NY DAILY MIRROR

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Date: 10/6/71
 Edition:
 Author:
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59 OCT 20 1971

Peace Workers honored in Chi by businessmen

By MORT SCHAFFNER

CHICAGO, Oct. 5—"The voice of George Meany for war is not the voice of labor," declared Abe Fineglass, vice president of the Amalgamated Meatcutters and Butcherworkmen's Union as he presented an award for peace work to Frank Rosenblum, president of the Amalgamated Clothing Workers.

Five thousand peace advocates jammed into Orchestra Hall in the Loop here last Friday evening for the first annual National Peace Awards Ceremony sponsored by the Business Executives Move for Peace (BEM). The awards were presented to a list of people chosen for "their outstanding and courageous leadership in the struggle for peace."

In accepting his award, Rosenblum stated, "The dissent against this totally unjustifiable and immoral war is now rampant across the nation. I'm sure there would be no war if there were no profit in war."

"Get the war over"

"The war must be over, and over quickly, but there are other things that must concern us also. These wars will continue to come upon us if we don't fight and continue to fight the deeply rooted causes of this injustice."

Dr. Benjamin Spock, an award recipient, told Atty. General Ramsey Clark, who was serving as Master of Ceremonies, "It's one thing to have someone on your side, and it's another thing to win them over from the other side."

Stating that neither the Democrats nor the Republicans "offer any real future to the peace-seeking people of America," Spock asked people to participate in the founding of a National Third Party over the Thanksgiving weekend in Dallas, Texas.

Accepting an award on behalf of the 250,000 members of Another Mother for Peace, Barbara Avedon, a founder and co-chairman of the organization, hailed the international struggle for peace.

"We cut temporary president," she declared, "no more guns, no more sons! Power to the Peace Makers."

Award for Rev. King

Chicagoan Al Raby, accepting a posthumous award to Dr. Martin Luther King Jr., called King "the greatest man of our time."

Others receiving awards were political cartoonist Bill Mauldin, David Schenckman, and former Lt. John Kerry, holder of three purple hearts, the bronze and silver stars, and founder of Vietnam Veterans Against the War. He called

the aggression in Southeast Asia "politically misguided and historically obscene, and not worth one human life."

Also receiving an award was Rev. Ralph Abernathy, who is currently in the German Democratic Republic after a tour of the Soviet Union. Cirilo McSweeney, accepting the award for Rev. Abernathy, called upon the American people to "put a stop to the election and re-election of those people who just do not respect peace and humanity."

Folksinger Joan Baez received her award, urging people to "learn to defend human life rather than flags."

In a surprise appearance, U.S. Rep. Peter McClosky, an announced Republican opponent of Nixon for the presidency in 1972, introduced Daniel Ellsberg and Anthony J. Russo the two men responsible for leaking the Pentagon Papers to the public. Friday was the two year anniversary of the time the two men began photocopying the documents, they observed.

Russo, who just spent 47 days in jail for his actions, many of them in a solidarity hunger strike with the victims of Attica, said that while in Vietnam as a Rand Corporation observer he reported to U.S. officials many atrocities in South Vietnamese jails, but got no response. He now knows, he said, for "the U.S. government commits the same kind of atrocities here."

Russo further reported that a U.S. contractor is currently building 400 more tiger cages on Con Son Island, at the expense of the U.S. Taxpayer. "Furthermore," he added, "this contractor pays 50 to 70 cents a week for prison labor." The U.S. government is paying a half million dollars for the construction of the tiger cages.

Other awards were presented to U.S. Senator William Fulbright, Henry Niles, leftist Pablo Casals, Dr. George Wald, and former Senator and present Senatorial candidate Wayne Morse.

Entertainment was presented by the Wilderness Road, Byron Freeny, Sandra Singer and Bob Lewis. The "Two Year War Machine," an animated film about the draft and the Army, was also shown.

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Gravel Immune In Papers Case But Not Aide

By Sanford J. Ungar
Washington Post Staff Writer

A federal judge in Boston ruled yesterday that a grand jury investigating disclosure of the Pentagon Papers may not inquire into a special midnight Senate subcommittee meeting called by Sen. Mike Gravel (D-Alaska) last June 29 to make the documents public.

U.S. District Court Judge W. Arthur Garrity Jr. ordered, however, that a Gravel aide, Dr. Leonard S. Rodberg, must answer a grand jury subpoena.

Rodberg may be questioned about his subsequent arrangements for publication of Gravel's copy of the secret Pentagon study, the judge said.

Stating flatly that the legislative privilege of the Constitution "belongs to congressmen only and not to their assistants and aides," Garrity refused to quash a subpoena served on Rodberg in August.

In a companion ruling on cases that he has had under advisement for more than three weeks, the judge ruled that Richard Falk, a professor of international law at Princeton University, must also appear before the Boston grand jury.

Garrity rejected the arguments of both Rodberg and Falk that the First Amendment protected their work in preparing comment on public issues, much as it protects newspapers and their employees.

Sources close to Gravel said the senator will appeal Garrity's ruling to the First U.S. Circuit Court of Appeals in Boston.

Gravel's attorneys have consistently contended that if Rodberg appears before the grand jury for any questioning about his work for the senator, Gravel's legislative immunity will be endangered.

Attorneys for Rodberg and

Falk also said they will ask Judge Garrity to certify his decisions as "important questions" for review by the appellate court. (A judge's refusal to quash a subpoena is not ordinarily appealable.)

If the lower court judge refuses to permit an appeal, the two men will have to appear before the grand jury or face possible contempt of court charges.

During a day-long hearing before Garrity on Sept. 10, Attorney Paul C. Vincent of the Justice Department's Internal Security Division had argued that Gravel himself or any other congressman could be subpoenaed in the Pentagon papers investigation.

He contended that Gravel's subcommittee meeting—where he incorporated the entire text of his copy of the Pentagon papers into the record—was unauthorized and therefore unprotected by the legislative immunity of the "speech and debate clause" in Article I in the Constitution.

But Garrity rejected that stand, too, "on the basis of the general rule restricting judicial inquiry into matters of legislative purpose and operations."

He specifically stated, however, that "Senator Gravel's arranging for private publication of the Pentagon papers by Beacon Press stands on a different footing, and, in the court's opinion, is not embraced by the speech and debate clause."

Beacon, the nonprofit publishing arm of the Unitarian Universalist Association, has scheduled release of the four-volume "Senator Gravel Edition" of the study for later this month.

Gravel says he hired Rodberg, once a physicist with the U.S. Arms Control and Disarmament Agency, just before the special meeting of his Subcommittee on Buildings and

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Judge rules Gravel aide must appear at Hub jury

US District Court Judge W. Arthur Garrity yesterday ruled that Dr. Leonard S. Rodberg, aide to Sen. Mike Gravel (D-Alaska), must appear before a Federal Grand Jury investigating the Pentagon Papers but limited the areas in which he can be questioned.

Judge Garrity said that Rodberg cannot be quizzed about a Senate subcommittee session during which Sen. Gravel released a copy of the papers. Rodberg can,

however, be asked about the publication of the papers by Beacon Press.

Rodberg had been subpoenaed by the Grand Jury to appear on Aug. 24. Sen. Gravel took the issue to court, claiming a senator's constitutional immunity.

In a separate decision, Judge Garrity refused to invoke First Amendment privileges in a request by Richard Falk, a prominent professor of international law, to quash the Grand Jury subpoena.

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THE BOSTON GLOBE
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THE BOSTON HERALD
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BOSTON, MASS.

THE BOSTON RECORD
AMERICAN
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Date: 10/5/71
Edition: Evening
Author:
Editor:
Title: Thomas Winship
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NATIONALITIES
Character: INTELLIGENCE
or Espionage
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(GRAVEL)

BOSTON--AN AIDE TO SEN. MIKE GRAVEL, D-ALASKA, HAS BEEN ORDERED TO APPEAR BEFORE A FEDERAL GRAND JURY INVESTIGATING THE RELEASE OF THE PENTAGON PAPERS, BUT HE DOES NOT HAVE TO TALK ABOUT THE SENATE MEETING WHERE THEY WERE MADE PUBLIC.

THE ORDER, ISSUED MONDAY BY U.S. DISTRICT JUDGE W. ARTHUR GARRITY, PROTECTS THE AIDE, DR. LEONARD S. RODBERG, FROM TESTIFYING ABOUT ANY ACTIONS TAKEN UNDER GRAVEL'S DIRECTION.

GARRITY SAID THE GRAND JURY COULD ASK RODBERG ABOUT PLANS BY BEACON PRESS TO PUBLISH THE STUDY OF DEFENSE DEPARTMENT DECISION MAKING IN THE VIETNAM WAR LATER THIS MONTH.

BUT THE SPEECH OR DEBATE CLAUSE OF THE CONSTITUTION, WHICH PROTECTS CONGRESSMEN FROM SUITS, MEANS THAT "NO WITNESS BEFORE THE GRAND JURY MAY BE QUESTIONED ABOUT SEN. GRAVEL'S CONDUCT AT A MEETING OF THE SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS ON JUNE 29, 1971, NOR ABOUT THINGS DONE BY THE SENATOR IN PREPARATION FOR AN INTIMATELY RELATED TO" THE MEETING, THE COURT SAID.

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Sen. Edward M. Kennedy, left, and Daniel Ellsberg meet briefly in a corridor in Boston after Kennedy's speech to the Vietnam Veterans Against the War.

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Ellsberg, Kennedy tell antiwar vets war is not ending

By Joe Pilati
Globe Staff

Dr. Daniel Ellsberg and Sen. Edward M. Kennedy (D-Mass.) joined a succession of Indochina war veterans at Boston Faneuil Hall yesterday in denouncing Nixon Administration assertions that US troop withdrawals constitute sufficient proof of a "winding down" of the war.

Ellsberg and Kennedy took part in the first day of "Winter Soldier Investigation II," sponsored by Vietnam Veterans Against the War (VVAW). The veterans' public hearings on their war experiences resume at 9 a.m. today and will continue through Saturday afternoon.

Comparing the President to "a magician who uses misdirection," Ellsberg, the former Rand Corp. defense analyst who made public the Pentagon papers first published in June, said Mr. Nixon's speeches "distract us" from the on-going air war and plans for "computerized battlefields" and promote "a definition of the war that confines itself to the role of American ground troops."

"In the last two years alone, President Nixon has dropped more explosives on Indochina than we delivered in all theaters of World War II," Ellsberg said. "This aspect of the war is not winding down."

Ellsberg arrived at Faneuil Hall with two volumes of the newly-published US Government Printing Office edition of the Pentagon Papers tucked under his arm. Although some section of the 47-volume study of the war dealing with negotiations and the Vietnam War issue are omitted, Ellsberg said the govern-

ment edition is "a good buy at \$50 ... and I can assure you that's a lot cheaper than Xeroxing."

The former Pentagon aide said his wife "defined for me what I was involved in, even as an internal critic ... She read the study and said, 'This is the language of torturers.'" He said he now believes "the psychology of torture and the morality of torture have come to capture the morality of American officials."

Kennedy, who heads the Senate Subcommittee on Refugees, noted that civilian casualties treated by hospitals in South Vietnam during the first half of this year were equal to those of the peak periods during the major "escalations" of the late '60s.

"We as Americans can take satisfaction from the withdrawal of American troops, but we can take little satisfaction from the fact that the number of refugees being created is higher now than at any time since our involvement in Indochina began," Kennedy said.

Kennedy lauded VVAW for holding "one of the most constructive kinds of meetings we could have" and for focusing upon "problems long ignored by this Administration and previous administrations." Noting that the US is providing compensation for lives lost in "villages bombed by mistake" at a rate of approximately \$53 per fatality, the senator added:

"If it were \$5 million it could never be adequate compensation ... but this is only one of the seedier aspects of our whole involvement. In spite of all we can do to assist refugees' the most important thing that must be done is to bring an end to this war and to one of the darkest chapters in American history."

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THE BOSTON GLOBE
BOSTON, MASS.

THE BOSTON HERALD
TRAVELER
BOSTON, MASS.

THE BOSTON RECORD
AMERICAN
BOSTON, MASS.

Date: 10/8/71
Edition: Morning
Author: Joe Pilati
Editor: Thomas Winship
Title: VVAW

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Character: IS 170 OCT 18 1971
or
Classification: 100-42739
Submitting Office: Boston

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59 OCT 20 1971

Yesterday's panel of veterans was headed by Eric Herter, a former Signal Corps officer at Soc Trang, South Vietnam. He is a grandson of former Massachusetts Gov. Christian Herter, who was also a secretary of state during the Eisenhower Administration.

Herter said "new forms of war" are replacing "the unpopular struggle of infantry patrol against guerrilla band" with "a greater atrocity than 100 My Lais — the systematic destruction of thousands of innocent persons by an automated, electronic and mechanical death machine.

"It will very soon be possible, through a combination of satellites, computer banks, electronic surveillance devices, drone planes, television-guided bombs and laser-beam range finders to monitor and control all human activity anywhere on earth," Herter added. "There are no Charlie Companies involved, only a blameless mechanic, half a world away, keeping his assigned machines in order."

Today's and tomorrow's testimony will deal with America's and Japan's economic plans for Southeast Asia; Washington's and Saigon's alleged involvement in drug traffic, and problems of veterans in obtaining jobs and health care.

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Court Orders Listing Of Ellsberg's Property

LOS ANGELES, Oct. 4 (AP) —An independent inventory of Daniel Ellsberg's records and other property was ordered today by U.S. District Court Judge William M. Bryne Jr.

However, Bryne denied a defense motion to appoint a special master to inventory the property seized by the FBI last month.

The defense had requested the inventory so it can prepare for possible motions to suppress the evidence in the case of the former Rand Corp. employee, who is under federal indictment for unauthorized possession of the so-called "Pentagon papers."

Ellsberg, 40, was not present in court.

The FBI had seized the property under a federal search warrant last Sept. 20 from Bekins Moving and Storage Co. In Monday's proceedings it was revealed that the FBI returned the materials to the Bekins warehouse Sept. 23.

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Grand Jury Is Barred From Probing Gravel

By LYLE DENNISTON
Star Staff Writer

A federal judge in Boston has forbidden a federal grand jury to investigate the disclosure by Sen. Mike Gravel, D-Alaska, of the secret Pentagon papers at a Senate hearing June 29.

U.S. District Judge W. Arthur Garrity Jr., in a 17-page decision yesterday, said no one — Gravel, his staff, or anyone else — May be asked questions about the senator's public readings from the 47-volume study.

The ruling set a precedent, in that no federal judge had ever put restrictions on a grand jury's authority to investigate the conduct of a member of Congress.

At the same time, Garrity raised the possibility that Gravel and one or more of his staff aides might have to face criminal investigation if they go ahead with plans to have their copy of the Pentagon papers published privately.

Not 'Legislative Act'

Any such publication, the judge ruled, is not a "legislative act" and thus would not enjoy the same immunity to challenge that Gravel's disclosures at the Senate hearing do.

Gravel called a midnight hearing of a Senate Public Works subcommittee to read into the public record long excerpts of the study of the origins of the Vietnam war. At that time, the Justice Department was trying in the Supreme Court to block newspapers from publishing the "top secret" documents.

Last month, a staff member Gravel had hired the day of the hearing, Leonard S. Rodberg, was ordered to appear before the federal grand jury in Boston which is investigating public release of the Pentagon papers.

Justice's Argument

In defending the subpoenaing of Rodberg, the Justice Department contended that neither Rodberg nor Gravel had any legal immunity to criminal prosecution for breaking the law against release of classified documents.

Judge Garrity rejected the Justice Department argument yesterday, and ruled that the

Constitution protects Gravel for what he did at the hearing and protects any staff member who helped him prepare for that hearing.

He relied on a clause in the constitution which says that members of Congress may not be questioned outside of Congress for their official actions.

The judge rejected a Justice Department argument that the hearing called by Gravel was not held for a legislative purpose. That question is beyond inquiry by the courts, the judge declared.

'May Not Be Prosecuted'

In ruling that the grand jury would not even probe into actions at the hearing or actions "intimately related" to it, the judge said that "a congressman may not be prosecuted for legislative acts."

If a congressman is charged with crime for non-legislative acts, he added, "No evidence from any source of a congressman's legislative acts may be considered against him."

The judge said he would not permit any witness before the grand jury to be questioned about Gravel's conduct at the hearing or in preparing for it.

He also declared that Rodberg could not be questioned about actions he may have taken under Gravel's directions at the meeting or in relation to it.

Immunity to Staff

In order to protect Gravel's immunity from prosecution, the judge said it was necessary also to give immunity to the personal staff of the senator.

Thus, he said, the grand jury is barred from inquiring into anything done by Rodberg as an aide to Gravel "which would have been legislative acts . . . if performed by the senator personally."

However, the judge refused Rodberg's request that the grand jury be barred from calling him to answer any questions.

Rodberg may be questioned about "the activities of third parties with whom he and the senator dealt," and may be asked about his own actions before he joined the senator's staff and "many of his actions thereafter."

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Television

Morning

- 6:00 (2) News: John Hart
(4) Today Show: Taped in Japan
(7) Listen and Learn
6:15 (11) News Reports: Roy Whitfield
7:30 (5) Cartoons (to 9:30)
(7) A. M. New York
(9) News Reports
(11) Cartoons
8:00 (2) Captain Kangaroo
(5) Cartoons
(9) Cartoons
8:30 (13) TV SCHOOL PROGRAMS (to 4)
9:00 (2) Farmer's Daughter
(4) Not for Women Only: Barbara Walters
(7) Man Trap
(9) Journey to Adventure
(13) Sesame Street
9:30 (2) Donna Reed (R)
(4) Phil Donahue: Interview Show
(5) Truth or Consequences
(7) Movie: "I Could Go On Singing" (1963), Judy Garland, Dirk Bogarde. If only she had. A well-aimed but soggy drama of mother love, long on lumps
(9) Friendly Giant
(11) Fashions in Sewing
9:40 (11) Jack La Lanne
10:00 (2) Lucy Show (R)
(4) Dinah's Place
(5) MOVIE: "Tops Is the Limit" (1936), Bing Crosby, Ethel Merman, Charles Ruggles, Ida Lupino. Lousy new title for "Anything Goes." Nice and sprightly even with most of Cole Porter scrapped



J. J. Barry and Louise Lasser in "Masquerade,"
Channel 13 at 8 P.M.

1:30 P.M. Baseball: Giants at Pittsburgh; to be followed by Baltimore at Oakland (4)

7:30 P.M. Ironside: Police Drama (4)

7:30 P.M. The Mod Squad: Police Drama (7)

7:30 P.M. Up Against New York (13)

- 2:25 (11) News Reports
2:30 (2) Guiding Light
(7) The Dating Game
(11) Patty Duke
(31) Around The Clock
3:00 (2) Secret Storm
(5) Cartoons (to 4:30)
(7) General Hospital
(9) What's My Line? (R)
(11) Popeye Show
(21) Masterpiece Theater
(31) Book Beat

- (13) BOOK BEAT: Robert Cromie interviews Archibald MacLeish, author of the play, "Scratch"
(21) Folk Guitar
(31) Around the Clock
(41) El Usurero
7:30 (2) The Glen Campbell Show: Presentation of Photoplay Awards. Ali MacGraw, Ryan O'Neal, Jack Benny, Debby

Charges Against Dr. Daniel Ellsberg?" (season premiere)

- 9:00 (11) Rawhide (R)
(21) Living Screen
(31) The Police Commissioner
(41) Espectaculo
9:30 (2) Cannon: William Conrad as private investigator
(4) The Funny Side: Of law and order, five couples provide different viewpoints, with Gend Kelly, host
(13) Black Journal: Report on South American nation of Guyana, its efforts at self-help, the development of cooperatives, nationalization of industry. Prime Minister Forbes Burnam interviewed (season premiere)
(21) Long Island News Report
(31) Quest for Adventure
(41) La Cruz de Marisa Cruces
(47) Esto No Tiene Nombre
10:00 (5) News Reports
(7) Marcus Welby, M.D.: "I Can Hardly Tell You Apart," Robert Young, James Brolin, Elena Verdugo; Sally Field, guest star
(11) News Reports
(13) Wiseman Week: "Hospital," filmed at Metropolitan Hospital, New York City (R)
(21) Beginning German
(31) United Nations General Assembly Coverage
(41) Angelitos Negros
10:30 (2) The Goldiggers: Ruth Buzzi, guest hostess, with Charles Nelson Reilly, Alice Ghostley, Don Rice, Barbara Heller
(4) PUERTO RICAN SPECIAL: Native songs, dances and costumes
(8) Digest: Tom Dunn
The Wall Street Journal
The National Observer
People's World

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Grand Jury Is Barred From Probing Gravel

By LYLE DENNISTON
Star Staff Writer

A federal judge in Boston has forbidden a federal grand jury to investigate the disclosure by Sen. Mike Gravel, D-Alaska, of the secret Pentagon papers at a Senate hearing June 29.

U.S. District Judge W. Arthur Garrity Jr., in a 17-page decision yesterday, said no one — Gravel, his staff, or anyone else — May be asked questions about the senator's public readings from the 47-volume study.

The ruling set a precedent, in that no federal judge had ever put restrictions on a grand jury's authority to investigate the conduct of a member of Congress.

At the same time, Garrity raised the possibility that Gravel and one or more of his staff aides might have to face criminal investigation if they go ahead with plans to have their copy of the Pentagon papers published privately.

Not 'Legislative Act'

Any such publication, the judge ruled, is not a "legislative act" and thus would not enjoy the same immunity to challenge that Gravel's disclosures at the Senate hearing do.

Gravel called a midnight hearing of a Senate Public Works subcommittee to read into the public record long excerpts of the study of the origins of the Vietnam war. At that time, the Justice Department was trying in the Supreme Court to block newspapers from publishing the "top secret" documents.

Last month, a staff member Gravel had hired the day of the hearing, Leonard S. Rodberg, was ordered to appear before the federal grand jury in Boston which is investigating public release of the Pentagon papers.

Justice's Argument

In defending the subpoenaing of Rodberg, the Justice Department contended that neither Rodberg nor Gravel had any legal immunity to criminal prosecution for breaking the law against release of classified documents.

Judge Garrity rejected the Justice Department argument yesterday and ruled that the

Constitution protects Gravel for what he did at the hearing and protects any staff member who helped him prepare for that hearing.

He relied on a clause in the constitution which says that members of Congress may not be questioned outside of Congress for their official actions.

The judge rejected a Justice Department argument that the hearing called by Gravel was not held for a legislative purpose. That question is beyond inquiry by the courts, the judge declared.

'May Not Be Prosecuted'

In ruling that the grand jury would not even probe into actions at the hearing or actions "intimately related" to it, the judge said that "a congressman may not be prosecuted for legislative acts."

If a congressman is charged with crime for non-legislative acts, he added, "No evidence from any source of a congressman's legislative acts may be considered against him."

The judge said he would not permit any witness before the grand jury to be questioned about Gravel's conduct at the hearing or in preparing for it.

He also declared that Rodberg could not be questioned about actions he may have taken under Gravel's directions at the meeting or in relation to it.

Immunity to Staff

In order to protect Gravel's immunity from prosecution, the judge said it was necessary also to give immunity to the personal staff of the senator.

Thus, he said, the grand jury is barred from inquiring into anything done by Rodberg as an aide to Gravel "which would have been legislative acts . . . if performed by the senator personally."

However, the judge refused Rodberg's request that the grand jury be barred from calling him to answer any questions.

Rodberg may be questioned about "the activities of third parties with whom he and the senator dealt," and may be asked about his own actions before he joined the senator's staff and "many of his actions thereafter."

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Gravel Immune In Papers Case But Not Aide

By Sanford J. Ungar
Washington Post Staff Writer

A federal judge in Boston ruled yesterday that a grand jury investigating disclosure of the Pentagon Papers may not inquire into a special midnight Senate subcommittee meeting called by Sen. Mike Gravel (D-Alaska) last June 29 to make the documents public.

U.S. District Court Judge W. Arthur Garrity Jr. ordered, however, that a Gravel aide, Dr. Leonard S. Rodberg, must answer a grand jury subpoena. Rodberg may be questioned about his subsequent arrangements for publication of Gravel's copy of the secret Pentagon study, the judge said.

Stating flatly that the legislative privilege of the Constitution "belongs to congressmen only and not to their assistants and aides," Garrity refused to quash a subpoena served on Rodberg in August.

In a companion ruling on cases that he has had under advisement for more than three weeks, the judge ruled that Richard Falk, a professor of international law at Princeton University, must also appear before the Boston grand jury.

Garrity rejected the arguments of both Rodberg and Falk that the First Amendment protected their work in preparing comment on public issues, much as it protects newspapers and their employees.

Sources close to Gravel said the senator will appeal Garrity's ruling to the First U.S. Circuit Court of Appeals in Boston.

Gravel's attorneys have consistently contended that if Rodberg appears before the grand jury for any questioning about his work for the senator, Gravel's legislative immunity will be endangered.

Attorneys for Rodberg and

Falk also said they will ask Judge Garrity to "certify" his decisions as "important questions" for review by the appellate court. (A judge's refusal to quash a subpoena is not ordinarily appealable.)

If the lower court judge refuses to permit an appeal, the two men will have to appear before the grand jury or face possible contempt of court charges.

During a day-long hearing before Garrity on Sept. 10, Attorney Paul C. Vincent of the Justice Department's Internal Security Division had argued that Gravel himself or any other congressman could be subpoenaed in the Pentagon papers investigation.

He contended that Gravel's subcommittee meeting—where he incorporated the entire text of his copy of the Pentagon papers into the record—was unauthorized and therefore unprotected by the legislative immunity of the "speech and debate clause" in Article I in the Constitution.

But Garrity rejected that stand, too, "on the basis of the general rule restricting judicial inquiry into matters of legislative purpose and operations."

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He specifically stated, however, that "Senator Gravel's arranging for private publication of the Pentagon papers by Beacon Press stands on a different footing, and, in the court's opinion, is not embraced by the speech and debate clause."

Beacon, the nonprofit publishing arm of the Unitarian-Universalist Association, has scheduled release of the four-volume "Senator Gravel Edition" of the study for later this month.

Gravel says he hired Rodberg, once a physicist with the U.S. Arms Control and Disarmament Agency, just before the special meeting of his Subcommittee on Buildings and Grounds to edit its record—the Pentagon papers.

After being turned down by several other publishers, including the university presses at Harvard and the Massachusetts Institute of Technology, Rodberg later arranged for publication by Beacon.

Rather than quashing the subpoena issued to Rodberg, Garrity entered a protective order yesterday saying that no one could be questioned about "Gravel's conduct" at the meeting or about "things done by the senator in preparation for and intimately related to said meeting."

Rodberg was similarly protected from questioning "about his actions on June 29, 1971, after having been engaged as a member of Senator Gravel's personal staff to the extent that they were taken at the senator's directions" at the meeting or in preparation for it.

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Gravel Immune, But Not Aide

A federal judge in Boston ruled yesterday that Sen. Mike Gravel of Alaska, but not an aide, Leonard S. Rodberg, is immune from having to testify before a grand jury investigating disclosure of the Pentagon papers.

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Ellsberg wins one round

LOS ANGELES (UPI) — Daniel Ellsberg, who leaked the Pentagon Papers, won a legal skirmish yesterday when the government was ordered to turn over any notes it made on contents of 31 boxes of his belongings seized from a warehouse.

Attorneys for the former Rand Corp. employee, who admits he gave the secret Vietnam war documents to news papers, contend the seizure of the boxes Sept. 20 was illegal. They hope to bar any evidence obtained from the contents.

They asked for the notes, and for an official, independent inventory of the contents of the cartons, so that "if, in the future we want to be able to trace tainted evidence to them, we will have a credible list of what was in them," his attorney said.

U.S. district court judge Matthew Byrne Jr. ordered the government and Mr. Ellsberg's lawyer, Charles Nesson, to agree on an independent party to inventory the boxes, which the government returned to the Bekins Moving and Storage Co. in Beverly Hills Sept. 23.

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(ELLSBERG)

THE MAN WHO LEAKED THE

LOS ANGELES--DANIEL ELLSBERG, ~~XXXXXXXXXXXXXXXXXXXX~~ PENTAGON PAPERS, WON A LEGAL SKIRMISH MONDAY WHEN THE GOVERNMENT WAS ORDERED TO TURN OVER ANY NOTES IT MADE ON CONTENTS OF 31 BOXES OF HIS BELONGINGS SEIZED FROM A WAREHOUSE.

ATTORNEYS FOR THE FORMER RAND CORP. EMPLOYEE, WHO ADMITS HE GAVE THE SECRET VIETNAM WAR DOCUMENTS TO NEWSPAPERS, CONTEND THE SEIZURE OF THE BOXES SEPT. 20 WAS ILLEGAL AND HOPE TO BAR ANY EVIDENCE OBTAINED FROM THEM.

THEY ASKED FOR THE NOTES, AND FOR AN OFFICIAL, INDEPENDENT INVENTORY OF THE CONTENTS OF THE CARTONS, SO THAT "IF IN THE FUTURE WE WANT TO BE ABLE TO TRACE TAINED EVIDENCE TO THEM, WE WILL HAVE A CREDIBLE LIST OF WHAT WAS IN THEM," HIS ATTORNEY SAID.

U.S. DISTRICT COURT JUDGE MATTHEW BYRNE JR. ORDERED THE GOVERNMENT AND ELLSBERG'S LAWYER, CHARLES NESSON, TO AGREE ON AN INDEPENDENT PARTY TO INVENTORY THE BOXES, WHICH THE GOVERNMENT RETURNED TO THE BEKINS MOVING AND STORAGE CO. IN BEVERLY HILLS SEPT. 23.

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ELLSBERG 10-4 HC
 BY KATHLEEN NEUMEYER

LOS ANGELES (UPI)--THE GOVERNMENT MONDAY WAS ORDERED TO TURN OVER TO DANIEL ELLSBERG ANY NOTES MADE ON THE CONTENTS OF 31 CARTONS OF HIS POSSESSIONS SEIZED FROM A STORAGE FIRM HERE.

U.S. DISTRICT COURT JUDGE MATTHEW BYRNE JR. ALSO GRANTED ELLSBERG'S MOTION TO APPOINT AN IMPARTIAL PARTY TO COMPILE AN OFFICIAL INVENTORY OF THE BOXES, WHICH NOW HAVE BEEN RETURNED TO BEKINS MOVING AND STORAGE CO. IN BEVERLY HILLS.

ELLSBERG, UNDER INDICTMENT FOR LEAKING THE PENTAGON PAPERS, CLAIMED THE CARTONS CONTAINED NOTHING "BUT SOME INTERESTING MEMENTOES"--INCLUDING HIS HIGH SCHOOL YEARBOOK, HARVARD DIPLOMA AND HIS OLD MARINE UNIFORM.

HOWEVER, HIS ATTORNEYS HAVE FILED A MOTION TO SUPPRESS THE USE AS EVIDENCE OF ANY INFORMATION THE GOVERNMENT MAY HAVE LEARNED THROUGH SEIZURE OF THE BOXES.

"WE ARE ASKING FOR AN INVENTORY TO BE MADE OF THE CONTENTS OF THOSE BOXES, SO THAT IF IN THE FUTURE WE WANT TO BE ABLE TO TRACE TAINTED EVIDENCE TO THEM, WE WILL HAVE A CREDIBLE LIST OF WHAT WAS IN THEM," SAID CHARLES NESSON, A HARVARD LAW PROFESSOR REPRESENTING ELLSBERG. ELLSBERG WAS NOT PRESENT.

NESSON SAID HE AND LOS ANGELES ATTORNEY ARTHUR BERMAN MADE A CURSORY INSPECTION OF THE BOXES SEPT. 13, A WEEK BEFORE THE GOVERNMENT OBTAINED A SEARCH WARRANT AND REMOVED THEM FROM THE STORAGE COMPANY.

"I PERSONALLY SEALED THEM WITH MASKING TAPE AND WROTE MY NAME ON THE TAPE," NESSON SAID.

HE SAID THAT NEITHER ELLSBERG NOR ANY OF HIS LAWYERS HAD INSPECTED THE SPEWER BOXES SINCE SEPT. 23, WHEN THE GOVERNMENT RETURNED THEM TO BEKINS, "SO THAT THERE WOULD BE NO QUESTION OF OUR HAVING INTRODUCED ANYTHING INTO THEM OR REMOVED ANYTHING" BEFORE AN OFFICIAL INVENTORY WAS MADE.

BYRNE ORDERED NESSON AND ASSISTANT U.S. ATTORNEY DAVID NISSEN TO AGREE ON A MUTUALLY ACCEPTABLE PARTY TO INVENTORY THE BOXES. HE ALSO TOLD NISSEN TO FIND OUT AND INFORM ELLSBERG WHETHER GOVERNMENT AGENTS HAD MADE COPIES OF ANY DOCUMENTS IN THE BOXES ~~65-14060-14~~

"TO MY KNOWLEDGE THEY DID NOT," NISSEN SAID.

HE SAID HE ALSO DID NOT KNOW WHETHER THE FBI HAD MADE A COMPLETE INVENTORY OF THE CONTENTS OF THE CARTONS "ALTHOUGH I ASSUME THE AGENTS CATALOGUED THE ITEMS AND THEY MAY HAVE MADE SOME NOTES ABOUT SOME OF THEM."

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ELLSBERG 10-4 HC

1ST ADD ELLSBERG X X X THEM."

FBI AGENTS ACTING ON A SEARCH WARRANT SEIZED THE CARTONS FROM BEKINS ONLY HOURS AFTER BYRNE HAD MADE A CONDITIONAL RULING PROHIBITING THE GOVERNMENT FROM EXAMINING THE BOXES. HE SAID IN A LATER SESSION

THAT HE COULD NOT OVERRULE THE ISSUANCE OF THE WARRANT BY A U.S. MAGISTRATE.

BYRNE RULED MONDAY THAT IN THE FUTURE ANY SEARCH WARRANTS ISSUED AGAINST A DEFENDANT UNDER INDICTMENT MUST BE BROUGHT BEFORE THE U.S. DISTRICT JUDGE ASSIGNED TO THE CASE.

ELLSBERG GOES ON TRIAL EARLY NEXT YEAR ON CHARGES HE TOOK SECRET GOVERNMENT PAPERS WHILE EMPLOYED AT THE RAND CORP. IN SANTA MONICA AND RELEASED THEM TO NEWSPAPERS.

THE GOVERNMENT CLAIMED WHEN IT SOUGHT THE SEARCH WARRANT THAT THE BOXES CONTAINED MORE SECRET PAPERS.

DEFENSE LAWYERS CLAIM SEIZURE OF THE CARTONS VIOLATED ELLSBERG'S CONSTITUTIONAL RIGHTS AGAINST SELF INCRIMINATION AND UNREASONABLE SEARCH AND SEIZURE.

EM728PPD..

Russo Free In Pentagon Leak Probe

Los Angeles Times

LOS ANGELES, Oct. 1 — Anthony J. Russo, a controversial figure in the Pentagon papers case, was freed from federal imprisonment today after he agreed to testify before a grand jury.

U.S. District Judge Warren J. Ferguson ordered Justice Dept. Atty. David R. Nissen to convene the grand jury on Oct. 18 for Russo's appearance.

Russo's agreement to testify before a grand jury which indicted Daniel Ellsberg, former Pentagon and Rand Corp. analyst, for allegedly illegally stealing and possessing the secret documents, was tied to three unusual conditions:

- That a stenographer be present at all jury sessions to make a complete transcript.
- That copies of those transcripts be given to Russo within 36 hours of each session.
- That Russo be given the right to divulge the contents of those transcripts to anyone he desires without being prosecuted.

Russo went to jail here Aug. 16 rather than answer questions about Ellsberg and his relationship with him when both worked at Rand.

Technically, the court action came as a result of a motion by Russo's attorneys seeking the three concessions for possible future grand jury appearances by Russo.

"Will Mr. Russo purge himself of contempt (that is, testify as ordered before)," Judge Ferguson asked, "if the court grants the motion?"

"Your honor," Russo replied, "if the court grants the motion, I will testify and answer all relative questions."

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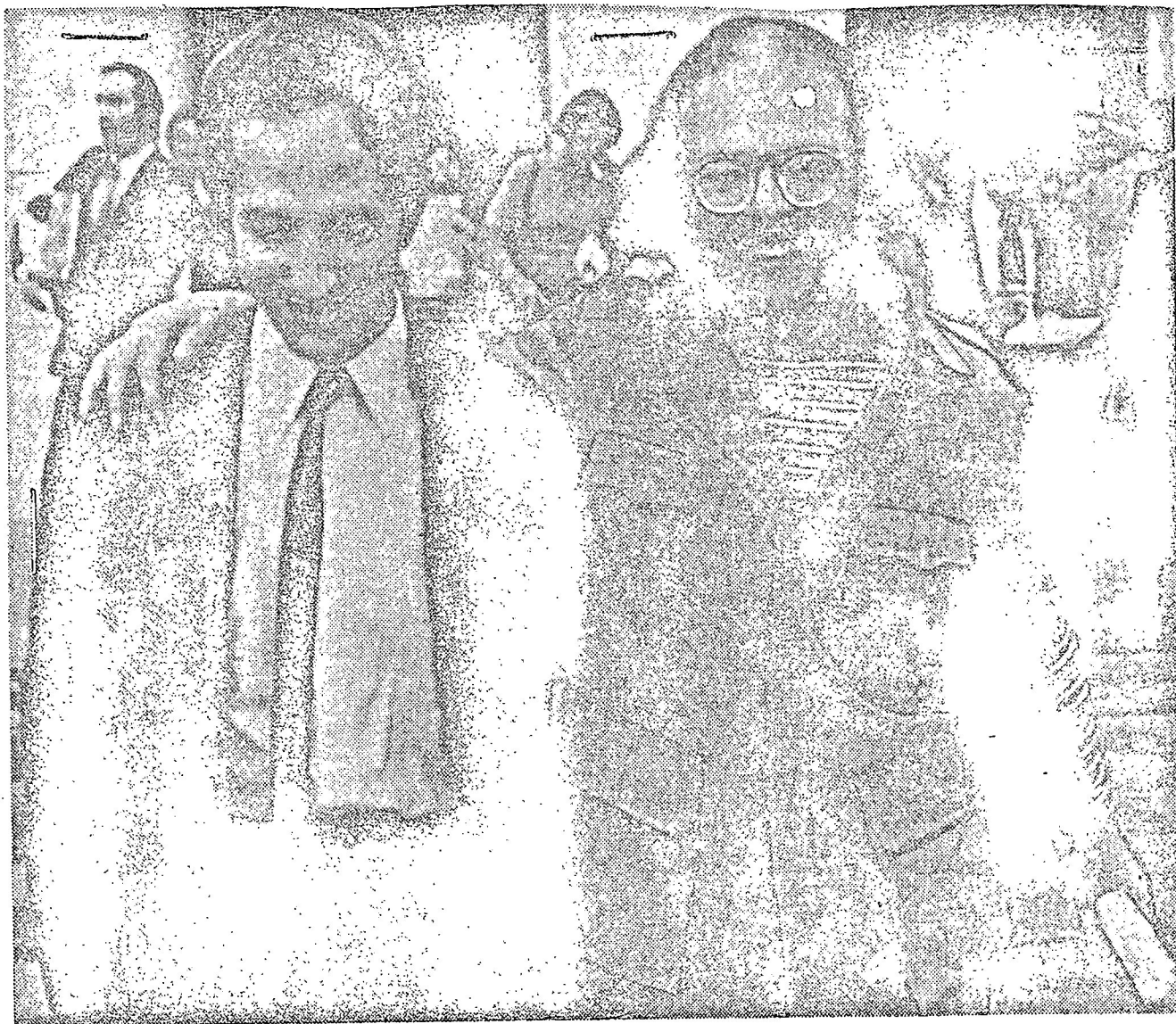
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United Press International

Anthony Russo, right, leaves court in Los Angeles with Daniel Ellsberg after a judge released him from jail. Russo, who had refused to testify on the Pentagon papers case, will now talk, and may make his testimony public.



By Ken Feil—The Washington Post

John Kerry, left, head of the Vietnam Veterans Against the War, exchanges a handshake with Daniel Ellsberg.

And One Copy For Ellsberg

By Henry Allen

He might have been almost any of your higher-GS-level executives ambling into the USIA office at 1776 Pennsylvania Ave. at 5:30 yesterday afternoon; one of the think-tank boys, probably, with those abstracted eyes and the froth of hair over blue pinstriped suit and silk tie.

He laid down \$50 cash. The clerk shoved a carton of the government's censored version of the Pentagon Papers across the counter and said no, business wasn't all that brisk, just a few librarians coming in.

"I didn't have a copy for myself," Daniel Ellsberg, now under indictment for leaking the Pentagon Papers to the press, explained an hour later as he ducked applause, shucked the coat and tie, and third-world-hand-shaked his way through the

fund-raising party at the Ivy Street headquarters of Vietnam Veterans Against the War and the Concerned Officers Movement.

"What would you do if somebody swiped that carton?" somebody yelled through the crush in two tiny townhouse rooms.

"I'd hope he'd make a copy," Ellsberg answered.

They were all jammed in there, Ellsberg, VVAW head John Kerry, Reps. Don Edwards (D-Calif.) and Les Aspin (D-Wis.), veterans in various hunks of uniforms, officers (up to major) dressed by the book, and functionaries of anti-war candidates to drink beer out of cans and wine out of plastic picnic glasses. And to raise \$330 rent money, by party's end. And to talk mainly

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59 OCT 1 1971

Ellsberg: \$50 for the Pentagon Papers

ELLSBERG, From B1

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The economy's decline, Nixon's planned China trip, 1972 campaign expenses and student despair have left the antiwar movement hurting.

"I go to campuses all over the country," Kerry said. "There's such a sense of cynicism. The futility thing. The students don't believe the system can respond.

"Money's hard to get because everybody's playing the presidential waiting game. The China thing and the economy have made it tough, too. We're trying to reach more people, use the honor of service to our country, the medals and uniforms. But it's difficult to convert people when they're waiting to see how Nixon's China trip works out.

"If the Democratic convention isn't good, if we get another 1968, those of us who say the system can respond are in trouble."

Asked if he was working within, without or against the system, Ellsberg said he was working. "in a different system. I'm working against the presidency. Twenty-five years of bull--- is concentrated in these volumes. I get letters from political prisoners thanking me for

proving they were right."

His credentials as an establishmentarian are still available in a room next to the USIA bookstore, however. A pamphlet entitled "Negotiation and Statecraft" contains essays by Confucius, Benjamin Franklin and Daniel Ellsberg, among others. (59 pp., U.S. Government Printing Office, 30 cents).

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"I'm not sure there is," Kerry said. "I think there could be." But Kerry played "the waiting game" and he wouldn't state his decision on just who that could be.

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When Daniel Ellsberg hurried out through the crowd and motorcycles to climb into a battered black Volkswagen for a ride to the airport, he was carrying his 31-pound, 12-volume, officially expurgated carton of paper. Plus an anvil-sized bright red, papier-maché mock-up of a desk stamp labeled "DECLASSIFIED."



Pentagon Acting to Send War Papers to Congress

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Henkin said the department had prepared the material for Congress to fulfill a promise made by Defense Secretary Melvin Laird during the controversy over the publication of the papers:

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In a speech on the Senate floor yesterday, Ervin challenged the administration attempt to compel a staff assistant to Gravel to testify before a federal grand jury in Boston.

The grand jury is looking into public disclosure of the secret "Pentagon Papers," and is seeking details about Gravel's reading of the papers at a Senate subcommittee meeting in June.

A subpoena ordering Gravel's assistant, Leonard S. Rodberg, to appear and testify is being contested in federal court in Boston by Rodberg and by Gravel.

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The Wall Street Journal _____
The National Observer _____
People's World _____

Date SEP 21 1971

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TOP CLIPPING

DATED 9-21-71

FROM WASH. OFFICIAL NEWS SERVICE

MARKED FILE AND INITIALED

54 SEP 30 1971

(Mount Clipping in Space Below)

Washington Plans an Aggressive War

By Ralph Stavins, Richard J. Barnett and Marcus G. Raskin.
New York: Random House, 374 pp. Cloth,
\$7.95. Paper, Vintage, \$1.95.

By **WILSON C. MCWILLIAMS**

In the court of public opinion, the verdict is already in. The war in Vietnam has been judged a mistake of such magnitude as to constitute a political "crime." And the guilty are being punished: Save for the few who recanted in time, the high officials who planned and conducted the war are probably barred from office-holding, the academics are exiled to havens in the South and Southwest, and all are destined—so long as the public mood holds—to suffer obloquy and opprobrium.

That verdict, however, seems inadequate to the authors of "Washington Plans an Aggressive War," partly because it is too lenient but even more because it treats Vietnam as an isolated case. The common theme of Ralph Stavins's history of American involvement, Richard Barnett's analysis of the national security bureaucracy and Marcus Raskin's treatment of the rise of executive irresponsibility is that the conditions and character of American foreign policy need remaking. They argue that this transformation of "imperial war-making" into a "code of personal responsibility" requires formal statutes and legal sanctions. Those who were responsible for Vietnam must be tried for the crime of waging aggressive war and formally excluded from office for a decade; a statute must be enacted forbidding officials to "preach or advocate" militarism or genocide or to conduct these and similar policies. "Washington Plans an Aggressive War" is not so much a study of the war as a brief for the prosecution.

Wilson Carey McWilliams teaches political science at Livingston College, Rutgers University, and is the author of the forthcoming "The Idea of

According to the authors, Ralph Stavins and others from the Institute for Policy Studies in Washington conducted more than 300 interviews over 20 months with "many of the top Presidential advisers to Presidents Kennedy and Johnson, generals and admirals, middle-level bureaucrats who occupied strategic positions in the national security bureaucracy, and officials, military and civilian, who carried out policy in the field in Vietnam." They had access to a good deal of documentation as well as portions of the official documentary record now known as "the Pentagon Papers." A second volume, "Washington Wages an Aggressive War," is to be published next spring.

Like many prosecutors, the authors are over-zealous. Unlike Neil Sheehan and his co-workers on The New York Times story, they are not content to let the protagonists speak for themselves, finding it necessary to include extensive glosses and explanations which go beyond the limits of permissible interpretation. For example, Gen. Maxwell Taylor's plan to infiltrate combat troops under the cover of flood relief — however reprehensible—is hardly illuminated by the comment that Taylor had "boldly conceived a strategy that could well lead to genocide but he was rather timid in applying it." A more valid reading would be that Taylor designed a scheme which could lead to escalation but sought to minimize the risks, but then there would be no clear connection to a war crime.

Similarly, Stavins does a fine job of exposing what remains of the Kennedy myth, exposing J.F.K.'s secretiveness, unwillingness to take responsibility and desire to escape the limits of normal political institutions. (In general, Kennedy seems to have created a "credibility gap"

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Miss Holmes	_____
Miss Gandy	_____

(Indicate page, name of newspaper, city and state.)

5 NEW YORK TIMES
NEW YORK

Date: 9/26/71
Edition: Daily
Author: Wilson Mc Willi
Editor: John B. Oakes
Title: MC LEK -
NATIONALISTIC
Character: INTELLIGENCE
or Espionage
Classification: 65-5236
Submitting Office: Boston
☐ Being Investigated

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after; in those years, however, we were more credulous.) But Stavins mars his analysis by referring to Kennedy's regime as a "budding totalitarian state under the control of a leader," a statement which a friend might call impassioned nonsense and an enemy malicious libel. Such liberties with the evidence, and they are numerous, are bound to create the suspicion that the prosecutors suspect their own case.

So they should. There is, in all of the book, no serious attempt to define "aggression." Small wonder: the task has baffled international lawyers ever since it was first attempted. In domestic law, if I believe you are about to assault me, I can ask for an injunction or simply wait, trusting that the likelihood of punishment will deter you from any assault you may be planning. You may strike or kill me anyway, but the odds are tolerable. In international politics, given the failure of collective security in the United Nations, the case is not the same and for obvious reasons. Failure to take preventive action can have consequences as serious as combating an unreal but imagined risk.

We believe, for example, that Chamberlain's appeasement was as wrong as we now think the domino theory was in Vietnam. But it was appeasement that gave us the "clear cases" of aggression in World War

II we now seem to expect everywhere. If Chamberlain had fought Hitler over the Rhineland or the Sudeten question, we would have no "proof" that the logic of the Nazi regime led to aggressive war; it would be easy to see such a hypothetical conflict as an "imperialist struggle" against "German self-determination." Yet such a policy, as we now think, would have saved millions of lives. Chamberlain held an erroneous theory; our policymakers adhered to an opposite notion, one we are convinced was equally wrong, but a theory nonetheless. Are officials legally criminal if their ideas prove inaccurate?

It is clear, after all, that Washington did not think it was planning an aggressive war. It believed it was acting to forestall "Communist ex-

pansionism" and to reduce the risks of nuclear war, the most criminal of all wars. Johnson told Taylor that we must be prepared to make our case at the United Nations against North Vietnamese aggression (that he was prepared to go ahead in the event of delays in the Security Council is a reflection of prudence, not evil intent), and as Stavins shows, the Administration at least made a serious effort to prevent needless civilian war casualties. Richard Barnet dismisses the issue of intent as "not particularly important" because officials must be held accountable for conduct which violates "the civilized conscience." But

what is this "conscience"? How did our leaders so signally fail to have it? When we tried the Nazis, there was no doubt that they intended aggressive war and that genocide was an explicit policy of the regime. The absence of similar evidence is fatal to the legal case against American policy in Vietnam.

Of course, officials are and should be politically accountable for the bad consequences of their acts. But it is precisely the nature of political offenses that they take place in areas where knowledge of the relation between ends and means is imperfect and it is all too easy to "go wrong." Unlike totalitarian states, we allow a wide range of legally protected disagreement about policy, and while it would be too much to call Raskin and his associates totalitarian, it is fair to say that they are arguing for a narrowed range of permissible difference of opinion (which, I suspect, they would never do domestically). Moreover, they are demanding that this new standard be applied *ex post facto*, for if "the civilized conscience" were as clear as Barnet imagines, there would be no need for the lengthy draft statute Raskin proposes to explain and codify the "crimes" in question.

It is not reassuring that the terms of this statute are vague to the point of obscurity. It is legitimate for the authors to urge that we remove those officials who contributed to the war; it was equally legitimate for conservatives to argue that John Stewart

John Paton Davies should be purged for what they took to be incompetence in judging China. But it was and is illegitimate to change a political disagreement into a legal prosecution, whether the charge is "treason" or "aggressive war."

That the disagreement is rooted in differing views of political reality is attested by such statements as Barnett's comment that "the principal thrust of United States policy in Europe has been to avoid the negotiation for a European settlement which the Soviets have been proposing," an assertion unlikely to go without challenge especially when there is no explanation of the nature of this proposed settlement. But it also never occurs to Barnett that the same statement could be made in relation to Hanoi; as Leslie Gelb (the organizer of "the Pentagon Papers") argues in the summer issue of the journal *Foreign Policy*, Johnson was willing to negotiate but failed to recognize that Vietnam was "not negotiable."

The unrecognized parallel can be carried further. Stavins argues that Diem and the Americans began the war first by their refusal to hold the elections scheduled for 1956. But this is inadequate: The Russians did not begin "aggressive war" by refusing to hold elections to reunify Germany or Korea, though reunification had been promised. The boundary

which divides Vietnam is as valid as the tentative divisions of Germany and Korea, and the Russians acknowledged the fact by proposing both Vietnams for U.N. membership as late as 1959. (Their reason, to impeach the Eisenhower Administration of dreaming of reconquering the North—which it was—suggests that Stavins has a strong case, but it will not do for him because that policy was abandoned by subsequent Administrations.)

That Stavins knows the defects of his case is demonstrated by the fact that he also argues that Diem "effectively reopened" the war by forming the Can Lao Party, accepting American military assistance, abolishing local elections and waging war "against the Vietminh." All this convicts Diem of being a despot, but that is no crime in international law. Oddly, his argument is valid only if the Vietminh are treated as subjects of a foreign state, presumably Hanoi, exactly what Washington feared.

The paradox points to a serious imbalance in the evidence which weakens the

"case" made by "Washington Plans an Aggressive War": that we lack access to any "Hanoi Papers" which could document the North Vietnamese role. Washington never doubted that the Vietcong had a local base of support. It only felt that without support from the North, Saigon could cope with the insurgency, and American officials hoped that our involvement would eventually reduce the conflict to the level of a civil war. If the hope was vain, we have no clear evidence that the analysis was incorrect. Stavins writes of American covert operations that such activity aims at "placing the onus of escalation on the other side while permitting his own side to disavow its acts by ascribing them to the client or by denying them altogether," a truth which applies equally to the similar operations of North Vietnam. So far as we know, the North may simply have been more successful; the balance of guilt in Vietnam is narrow enough to make it impossible to convict "beyond reasonable doubt."

Scholarly analyses and political polemics which assail the

assumptions of our foreign policy are desperately needed. The defects and dangers of the policy apparatus should, in fact, have been clear even without Vietnam, and the attack on the old "consensus" is long overdue. Public awareness remains primitive, and as Leslie Gelb writes, "If anti-Communism persists as the overriding domestic political issue it will also be the main bureaucratic issue." The zeal, the passion and the research that produce "Washington Plans an Aggressive War" are welcome in the task of political education, even in leading Americans to greater sensitivity to political crimes. But in relation to a conviction in a court of law the verdict on the authors' case will have to be, "Not Proven."



A photograph released by the
Defense Department and described
as showing one of three
North Vietnamese torpedo boats
attacking the destroyer
U.S.S. Maddox on Aug. 2, 1964,
in the Gulf of Tonkin.

(Mount Clipping in Space Below)

Ellsberg and the sauce of danger

WASHINGTON—It was a far cry from the usual bureaucratic assemblage called to fete the faithful servant completing 50 years or making a superior contribution to the suggestion box.

At La Gemma Restaurant were 1000 government workers from 25 agencies, defiantly honoring a super-grade ex-colleague who is under Federal indictment for breaking the rules they live by.

The emotion was richer than the \$5.50 dinner, which had of course the sauce of danger, and mutual admiration ran high as Daniel Ellsberg met the Federal Employees for Peace.

Their supervisors could hardly have approved such flouting of authority. Nor could Cabinet chiefs, and certainly not a President who likes people in neat, conforming rows. But they stood up with glistening eyes to greet him, proud of their own cheek, proud of being in the same room with the man who had kicked their temple and raided it of secret treasures. He told them that reading 7000 pages of the Pentagon Papers had persuaded him that "the US President is part of the problem." They cheered.

A young lawyer from the Justice Department, which is prosecuting Ellsberg, had not sold many tickets—colleagues told him he was guilty of "conflict of interest"—but he said, "One of the things we are trying to do is help people feel more free."

The turnout had overwhelmed both the sponsors and the star. They were forbidden the use of department bulletin boards, and had handed out leaflets at agencies. At State, one ticket seller was told, "Ellsberg should be hung." They were run out of the Pentagon.

The largest delegation was from Health, Education and Welfare, because as Katherine Wolpe of the National Institutes of Health, sitting at the head table, explained, "We are supposed to help people, and the war is against human beings."

Ellsberg was elated at the crowd, the reception, the huge papier mache "Declassified" stamp they gave him and the citation "in grateful recognition of distinguished service to the American people."

"Brothers and sisters," he called them and said he admired them and was proud of them. He had prepared a speech for a "very depressed crowd of people with paper bags over their faces."

"I feel this is a celebration," he said, and it certainly seemed that way.

He spoke to them in their own language, intimately, fraternally and at length. He told them of making reports with different colored pencils as a Marine in the Mediterranean. He told them of military exercises that never occurred when he was a war planner in Vietnam, of drawing up charts of South Vietnam patrols, and villages to be pacified that never were.

He spoke somberly of prisons. He told a long anecdote of visiting his friend and colleague Anthony Russo, who is under civil contempt charges for refusing to talk about the Pentagon Papers, in the Los Angeles jail. Russo was lying on his stomach in an isolation cell with arms and legs manacled. The guard told him, "I admire Russo's guts, and I admire your guts, and I wish I had the same kind of guts."

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Miss Gandy _____

(Indicate page, name of newspaper, city and state.)

8

THE BOSTON GLOBE
BOSTON, MASS.

THE BOSTON HERALD
TRAVELER
BOSTON, MASS.

THE BOSTON RECORD
AMERICAN
BOSTON, MASS.

Date: 9/25/71
Edition: Saturday
Author: Mary Mc Grory
Editor: Thomas Winship
Title: MC LEK-
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☐ Being Investigated

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Emsberg said reflectively, "I don't think prison is a place for anyone."

He had once in his hawk phase rejected the notion of Vietnam as "a mirror of our society." Now he thinks Attica is a mirror.

In prison, you have the perfect bureaucracy, he said, where violence is done to people not regarded as human beings or citizens, by officials operating in total secrecy and not accountable to anyone.

He spoke of the futility of the risk he had taken. He had hoped his willingness to put his body on the line might "rub off" on high officials in the government, in the Congress, in the courts.

His listeners stirred sympathetically. They have in their regulated lives marched, petitioned and sung to get the government's attention. Some, like Madeleine Gold of HEW, were arrested on May Day, all to no avail.

What he had hoped might come out of resistance, he said, was "individuals in this society who do not see themselves as inmates or powerless."

He went on for an hour and 45 minutes, and some complained of the overtime. But many went up to shake his hand and thank him and to say he had shown them, as one State Department man said, "how this works in our little daily sellouts."

A Capitol Hill secretary said, "You know it was amazing, they all swarmed out of their cubbyholes, they knew there'd be loads of FBI, and they came anyway. I think they were surprised at how many of them are in the government."

Mary McGrory is a syndicated columnist.



United Press International

Anthony Russo, right, leaves court in Los Angeles with Daniel Ellsberg after a judge released him from jail. Russo, who had refused to testify on the Pentagon papers case, will now talk, and may make his testimony public.



By Ken Feil—The Washington Post

John Kerry, left, head of the Vietnam Veterans Against the War, exchanges a handshake with Daniel Ellsberg.

And One Copy For Ellsberg

By Henry Allen

He might have been almost any of your higher-GS-level executives ambling into the USIA office at 1776 Pennsylvania Ave. at 5:30 yesterday afternoon; one of the think-tank boys, probably, with those abstracted eyes and the froth of hair over blue pinstriped suit and silk tie.

He laid down \$50 cash. The clerk shoved a carton of the government's censored version of the Pentagon Papers across the counter and said no, business wasn't all that brisk, just a few librarians coming in.

"I didn't have a copy for myself," Daniel Ellsberg, now under indictment for leaking the Pentagon Papers to the press, explained an hour later as he ducked applause, shucked the coat and tie, and third-world-hand-shaked his way through the

fund-raising party at the Ivy Street headquarters of Vietnam Veterans Against the War and the Concerned Officers Movement.

"What would you do if somebody swiped that carton?" somebody yelled through the crush in two tiny townhouse rooms.

"I'd hope he'd make a copy," Ellsberg answered.

They were all jammed in there, Ellsberg, VVAW head John Kerry, Reps. Don Edwards (D-Calif.) and Les Aspin (D-Wis.), veterans in various hunks of uniforms, officers (up to major) dressed by the book, and functionaries of anti-war candidates to drink beer out of cans and wine out of plastic picnic glasses. And to raise \$330 rent money, by party's end. And to talk mainly

See ELLSBERG, B2, Col. 3

- Sullivan _____
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- Brennan, C.D. _____
- Callahan _____
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ELLSBERG, From B1

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"Money's hard to get because everybody's playing the presidential waiting game. The China thing and the economy have made it tough, too. We're trying to reach more people, use the honor of service to our country, the medals and uniforms. But it's difficult to convert people when they're waiting to see how Nixon's China trip works out.

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The Wall Street Journal _____
The National Observer _____
People's World _____

Date SEP 21 1971

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TOP CLIPPING

DATED 9-21-71

FROM WASH. CHRON.

MARKED FILE AND INITIALED

54 SEP 30 1971

NEWS SERVICE

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DAY OF LEGAL MANEUVERING

'Ellsberg Papers' Seized by FBI

BY JERRY COHEN
 and HOWARD HERTEL
 Times Staff Writers

The latest episode in the Pentagon papers controversy resulted Monday in FBI seizure of the "Ellsberg papers" from a Beverly Hills warehouse.

But agents won permission to remove documents stored by Daniel Ellsberg in a vault at Bekins Van & Storage Co., 215 Canon Drive, only after a daylong legal skirmish of various twists and turns.

Early Monday, it appeared that Ellsberg, 40, the ex-Rand Corp. consultant who leaked the Pentagon material to the press last June, had won a major battle in his bid to retain possession of documents and other items he began storing a year and a half ago.

As it turned out, Ellsberg won the first battle—but lost the legal war.

Search Warrant Valid

Late in the afternoon, U.S. District Judge Matt Byrne rejected a motion by Ellsberg attorneys to quash a federal magistrate's search warrant authorizing seizure of Ellsberg's documents from the vault.

Immediately afterward, FBI agents, posted there since noon, packed 28 separate parcels—including what appeared to be a military footlocker—aboard a pickup truck and drove away.

Earlier in the day, Byrne had quashed a grand jury subpoena which would have had the same effect as the warrant—opening the stored documents to an investigative arm of the government.

He did so, he said, to protect Ellsberg's guarantees by the Fourth and Fifth amendments.

The Fourth Amendment protects citizens from unreasonable search and seizure, the Fifth against self-incrimination.

Ellsberg's attorneys propounded similar arguments in their bid to knock down or at least obtain a stay of the subpoena. Search warrants issued in a matter of hours after Byrne had quashed the sub-

But Byrne said he could find "no authority" for overruling U.S. Magistrate Venetta S. Tassopoulos, who issued the warrant.

During several days of arguments revolving around the massive cache of items Ellsberg had deposited at intervals in the vault, Justice Department attorney David R. Nissen contended many of the stored documents were classified government records.

Ellsberg's attorneys insisted they were merely personal papers and possessions.

In quashing the subpoena, Judge Byrne said none of the evidence presented by the government either convinced him or left him doubting that government records were among the papers stored in the warehouse.

However, Byrne said whether they were or were not critical government records had nothing to do with his decision to quash.

Ellsberg's attorneys charged that

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I-1 Los Angeles Times
 Los Angeles, Calif.

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Date: 9/21/71
 Edition: Tuesday Final

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Submitting Office: Los Angeles

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seeking the records, the government was on "a blanket fishing expedition," hoping to find evidence that might be used against Ellsberg in his forthcoming trial.

The grand jury that issued the subpoena is the same one that indicted the former Pentagon analyst or unauthorized possession and theft of the Pentagon Papers.

Nissen denied the assertion of Ellsberg's attorneys, contending that the present focus of grand jury attention is not on Ellsberg since it already has indicted him.

After reading the transcript of grand jury proceedings since that indictment, Judge Byrne said he agreed with Nissen's contention that the present grand jury concern is with "other offenses that might have been committed and other persons who might have committed them."

After Byrne's morning ruling quashing the grand jury subpoena, Nissen asked the judge to order the papers remain undisturbed in the vault until he had conferred about the government's next step with Justice Department superiors in Washington.

Byrne did so but instructed Nissen that if the decision was to seek a

search warrant, the warrant must not be executed until after attorneys for both sides returned to his court at noon.

When they did so, Byrne said Ellsberg—or his representatives—were free to collect his belongings from Bekins.

About 12:10, two Ellsberg associates, Albert Appleby, 37-year-old businessman and peace activist, and Melvin Gurtov, associate professor of political science at UC-Riverside and former Ellsberg associate at Rand, arrived at the Bekins warehouse with a note from Ellsberg authorizing them to pick up Ellsberg's belongings.

But they found themselves trailing far behind the government.

Five FBI agents and a locksmith already were there, armed with the search warrant which Nissen had obtained at 10:20 a.m. but had waited until after the noon deadline to execute.

Appleby and Gurtov claimed foul. They insisted the government had violated Byrne's orders by obtaining the warrant before the noon deadline.

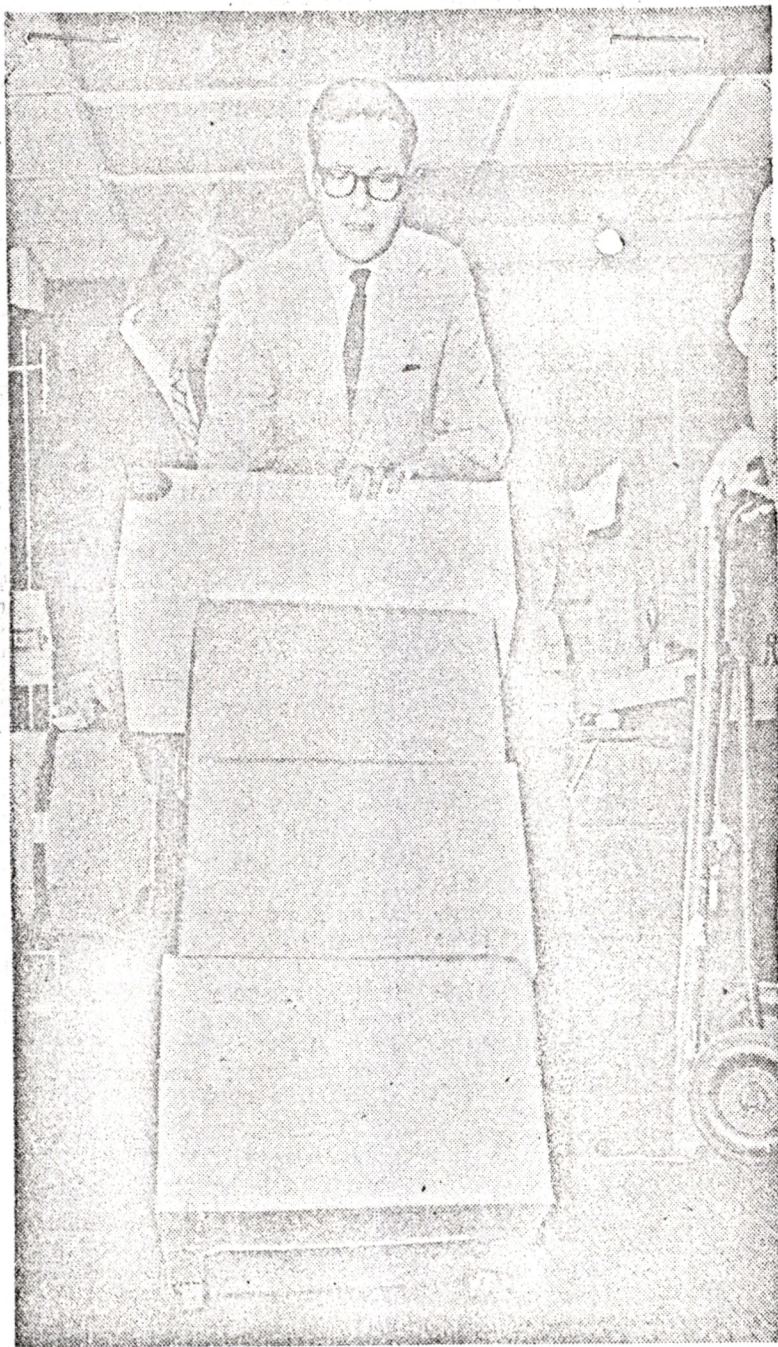
Not so, said the judge when Ellsberg's attorneys offered the same argument in downtown Los Angeles. Byrne had set no time limit on obtaining a warrant, he pointed out, only the execution of it.

"We were informed at noon Bekins would give instantaneous release of the documents to Dr. Ellsberg — and the govern-

ment was not about to sit on its hands," Nissen said in explaining the quick move to obtain the warrant.

Nissen presented Magistrate Tassopoulos with seven affidavits and exhibits in support of his request

for the search warrant. Their nature was not disclosed.



'ELLSBERG PAPERS'—FBI agents remove boxes of papers stored by Daniel Ellsberg in a Beverly Hills moving company vault.

Times photo

(Mount Clipping in Space Below)

'Everything We Did In Viet Went Wrong'

By TERENCE SMITH

(C) New York Times News Service.

NEW YORK—A section of the Pentagon's study of the Viet Nam war that focuses on U.S.-South Vietnamese political relations in the 1963-67 period concludes that, in seeking to apply political leverage to bring about a stable government in Saigon, "everything we did went wrong."

The section, which was briefly touched on in the series on the Pentagon study in the New York Times, presents a detailed picture of a problem that still confronts the United States: How to influence the South Vietnamese government.

The 160-page section constitutes one volume in the 7,000-page history of the war, which was commissioned by Robert S. McNamara in 1967 when he was secretary of defense and was completed in 1968.

The section shows that the Johnson administration grappled with many of the same problems that are bedeviling the Nixon administration, which has tried unsuccessfully to achieve at least the appearance of a contest in the presidential election scheduled for next Sunday.

While the current administration's policies and approaches to the problems may differ, the parallels with the past are striking.

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THE BOSTON HERALD
TRAVELER
BOSTON, MASS.

THE BOSTON RECORD
AMERICAN
BOSTON, MASS.

Date: 9/26/71
Edition: Sunday
Author: Terranced Smith
Editor: Thomas Winship
Title: MC LEK-
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This section of the Pentagon history, though containing no major revelations of fact, is one of the most analytical of the 47-volume history. The anonymous authors often express outspoken and pungently phrased opinions. Critical of much of the American policy of the 1963-1967 period, they come down hard on what they hold to be specific failures.

Other major points are:

—The United States prized governmental stability in Saigon above all else during the period and pursued it, the study says, "like the Holy Grail." In the name of stability, the United States supported "one military strongman after another" because, in the final analysis, "it saw no alternative but to back them."

—The South Vietnamese leaders capitalized on that attitude, the study says, and repeatedly defied American wishes on the assumption "that the United States had concluded it had no choice but to go along."

—The U. S. military command in Saigon, particularly its chief, Gen. William C.

Westmoreland, played what the study describes as "an important, mostly hidden role" in the political relations between the two governments during the period. As a result of close association with the South Vietnamese military, the command and Westmoreland assumed "a latent diplomatic role" by squelching coups and helping to put down military challenges to the government.

—The U. S. failure to apply effective leverage on Saigon by withholding military or economic assistance is ascribed in the study to "an almost universal consensus among American officials that the Vietnamese were too sensitive for such pressures to work."

THE PENTAGON history was written by 36 government and private specialists over a period of 18 months. The authors, who drew their material from the written records of the State and Defense departments, lacked access to the White House file on the period and were prohibited from interviewing the principal decision-makers.

Last spring, most of the study, including the political section, was made available to the New York Times. Large segments of its contents were disclosed in a series of nine installments published in the Times in June and July. The series focused primarily on the military aspects of the war and the decision-making process in Washington rather than on governmental relations.

the news from Saigon today are the same as those who figured in the Pentagon history in the earlier period.

President Nguyen Van Thieu, who was elected in 1967 from a field of 11, pushed through a special election law this year to limit the field and is now unopposed.

VICE PRESIDENT Nguyen Cao Ky, who as premier in 1967 was more prominent than Thieu but ultimately accepted second place on the ticket, dropped out this year, charging that the election was rigged.

Gen. Duong Van Minh, who was in power in 1964 but was barred from the 1967 race, also dropped out this year, accusing Thieu of rigging the election.

Ellsworth Bunker was the newly appointed ambassador in Saigon in 1967 and tried, then as now, to coax the South Vietnamese into holding an election that would be favorably received abroad. The role he played in 1967 is cited in the Pentagon history as a successful instance of American backstage activity and, thus, is an exception to the cases in which "everything we tried went wrong."

By the time Bunker arrived in Saigon in April, 1967, the study notes, the pre-nomination maneuvering was already intense between Ky, then premier, and Thieu, who was serving in the largely ceremonial office of chief of state.

"The United States mission was increasingly worried that the Thieu-Ky competition would threaten the indispensable unity of the military," the Pentagon history says.

AT WASHINGTON'S request, the new ambassador moved to reconcile the differences between the two men.

"Basically, Ambassador Bunker believed in an indirect approach," the study says. "His ploy was to hold an informal luncheon to which the two principals were invited." He counseled them both on the need to maintain the unity of the armed forces, but said that "in the end, they would have to find their own solution."

At the end of June, the two candidates appeared jointly before an extraordinary session of the Armed Forces Council, composed of the top 50 military officers.

"Thieu and Ky both performed histrionics," the study says, in making their cases before their peers. At the end of the 48-hour session, Thieu emerged on top and Ky — to the surprise of many — agreed to run for the vice presidency on the same ticket.

"The mission sighed in relief" at this the Pentagon history reports, "and everyone agreed that Bunker's approach had worked."

"With only a few hitches, the campaigning proceeded so as to satisfy American observers that it was acceptably fair," the study concludes. "The Thieu-Ky victory was a surprise only in its smaller-

than-expected plurality (35 per cent of the votes)".

THE NARRATIVE part of the study opens on Jan. 1, 1964, two months after the overthrow of President Ngo

Dinh Diem by a group of officers replaced by General Minh. In painstaking detail, it describes the American efforts to cope with the rapid succession of governments in

1964 and 1965, Ky's rise to power, the bloody months of the Buddhist struggle movement in 1966 and the 1967 elections.

Throughout the report, the

United States is portrayed as needling, prodding and cajoling Saigon into taking politically unpopular steps to im-

prove its performance against the Vietcong.

Innumerable emissaries from Washington went to Saigon to urge such steps as the expansion of the South Vietnamese army, suppression of corruption, revitalization of the economy, devaluation of the piaster, streamlining of the bureaucracy — all with an eye toward promoting more effective government.

THE SOUTH VIETNAMESE are portrayed in the study as ever willing to agree

to such reforms, but seldom prepared to deliver on their promises.

"When the United States offered more aid," the study says, "the Saigon government accepted it without improving; they promised to mobilize, but failed to speed up the slow build-up of their forces.

"When the United States offered a firm recommitment to encouraged them, including possible later bombing of North Vietnam, the Vietnamese government tried to pressure us to do it sooner.

"When the U.S. endorsed Gen. (Nguyen) Khanh," the report continues, referring to the officer who seized power

from Minh on Jan. 30, 1964, "he overplayed his hand, provoked mob violence and had to back down to a weaker position than before . . . During this period, the United States was already starting to think about doing the job ourselves if our Vietnamese ally did not perform."

Gen. Maxwell D. Taylor, was the U.S. ambassador to Saigon from 1964 to 1965, when the big American buildup began. He arrived in South Vietnam in the summer of 1964, just in time to witness the rapid-fire series of coups and counter coups that assumed, in the words of the study "comic-opera proportions."

ALTOGETHER there were six major changes of government and two unsuccessful coups during an 18-month period.

Taylor is portrayed in the study as frequently arguing with Khanh and as even sug-

gesting at one point that he should resign the premiership for the good of South Vietnam.

The seemingly endless instability infuriated Washington, where opposition to further American involvement was beginning to grow. At one point the State Department cabled Saigon: "The picture of petty bickering among the Vietnamese leaders has created an appalling impression abroad."

The study notes that throughout the political convulsions the United States was faced with the same dilemma: How to appear neutral and still guarantee the desired outcome.

"State's guidance to Taylor

on political matters was that the United States hand should not be too obvious in the government shuffling," the authors wrote. "But in general, the policy was to limit change and limit civilian influence."

DURING THIS PERIOD and even later, the Pentagon authors say, Westmoreland was a focal figure in the political machinations. The account notes that on two occasions he personally intervened to prevent Ky, who was then head of the air force, from bombing sections of Saigon that had been seized by rival groups.

On a third occasion, the study says, he blocked Ky from staging a coup of his own by threatening to withhold military support from the government the air force chief hoped to set up in November, 1964.

The Pentagon report portrays Westmoreland as being unfailingly solicitous of the South Vietnamese military and unwilling to use his influence to bring about the dismissal of corrupt and inefficient commanders for fear of offending the Vietnamese.

THE GENERAL'S strength, the Pentagon study's authors note, lay in the fact that he had at his command more combat troops than the entire South Vietnamese army, some

400 square miles of bases and near total discretion over the distribution of vast amounts of military assistance funds. He had control, the account says, over "the things that mattered the most to the South Vietnamese."

Perhaps the severest test of

Washington-Saigon relations took place in the spring and summer of 1966, when the Buddhist struggle movement paralyzed governmental activity in Saigon for four months and produced a state of civil war in the northern provinces.

The insurrection was triggered when Ky decided to get rid of Gen. Nguyen Chang Thi, the energetic and popular commander of the military region covering the five northernmost provinces. Pitched battles were fought in the streets of Hue and Da Nang between troops loyal to the premier and those supporting Thi.

At one point, without consulting the embassy, Ky sent several battalions of South Vietnamese Rangers in American aircraft to quell the dissidents. "State's first reaction," the study says, "was unrestrained fury." Secretary of State Dean Rusk cabled the embassy:

"This may require rough talk, but the United States

cannot accept this insane bickering. . . . Do your best in the next few hours. Intolerable that Ky should move against Da Nang without consulting us. Urgent now to insist that fighting stop."

IN THIS INSTANCE the "rough talk" actually involved a threat of U.S. force, the study notes. Referring to the Marine commander, it said.

"General Walt heard of a possible Vietnamese air force attack on dissident Vietnamese units in their compounds. He threatened to use United States jets to shoot them down if they tried. . . . If such an attack was planned, the threat succeeded."

At Washington's direction, Henry Cabot Lodge, who had succeeded Taylor as ambassador, eventually was able to reconcile the difference between the premier and Thi, who went into exile on July 31, 1966.

The Pentagon study portrays Lodge as almost father-

ly in his support of the South Vietnamese leaders with whom he worked. Lodge, the study says, advised Ky on a host of subjects, from what to include in a new constitution to how he should present it to the people.

In 1967 the United States concentrated its efforts on insuring the success of both the presidential election and the constituent assembly elections, which were held a few weeks later. The American objective in both, the study says, "was a democratic government in form; if we could not have reality, we would start with appearances."

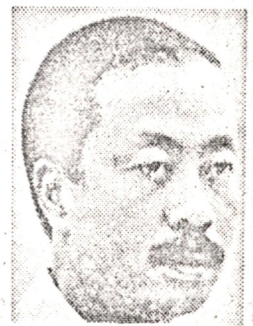
THE STATE Department's message to the ambassador on the proper United States

posture during the constituent elections said:

"The United States mission should seek to exert maximum influence . . . at the same time realizing that a key objective is to avoid anti-Americanism becoming a major issue.

"We shall be accused of interference in any event, but it is vitally important not to give potential anti-American elements or the press or outside observers any clear handle to hit us with.

"The elections should be conducted so as to gain a maximum improvement in the image of the Saigon government in the United States and internationally."



NGUYEN CAO KY



GEN. WESTMORELAND



ELLSWORTH BUNKER

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UPI-85

(PENTAGON PAPERS)

WASHINGTON --THE DEFENSE DEPARTMENT COMPLETED ITS DECLASSIFICATION OF THE CONTROVERSIAL PENTAGON PAPERS ON THE VIETNAM WAR TODAY AND TURNED OVER COPIES OF MOST -- BUT NOT ALL -- OF THE DOCUMENTS, TO HOUSE AND SENATE COMMITTEES.

THE FINAL FOUR VOLUMES OF AN ORIGINAL 47 STILL REMAIN CLASSIFIED. THEY DEAL WITH PEACE NEGOTIATIONS AND THE RELEASE OF PRISONERS OF WAR, ACCORDING TO A PENTAGON SPOKESMAN JERRY W. FRIEDHEIM.

OF THE OTHER 43 VOLUMES, 95 PER CENT OF THE MATERIAL HAS BEEN DECLASSIFIED, HE TOLD NEWSMEN.

THE STUDY WAS DRAWN UP IN 1967 AND 1968 UNDER ORDERS OF THEN DEFENSE SECRETARY ROBERT S. MCNAMARA.

PORTIONS OR ACCOUNTS OF THE DOCUMENTS WERE PUBLISHED THIS LAST SPRING BY SEVERAL NEWSPAPERS, STARTING WITH THE NEW YORK TIMES AND THE WASHINGTON POST, LEADING TO A SUPREME COURT RULING ON GOVERNMENT EFFORTS TO HALT PUBLICATION.

FRIEDHEIM SAID THAT SOME OF THE MATERIAL ALREADY PUBLISHED REMAINS OFFICIALLY CLASSIFIED AND WILL NOT APPEAR IN THE DEPARTMENT'S PUBLISHED VERSION.

THE DECLASSIFIED PAPERS WERE SENT TO THE HOUSE AND SENATE ARMED SERVICES COMMITTEE, THE SENATE FOREIGN RELATIONS AND HOUSE FOREIGN AFFAIRS COMMITTEES. THE HOUSE ARMED SERVICES COMMITTEE REPORTED THAT IT HAD SENT THE MATERIAL TO THE GOVERNMENT PRINTING OFFICE FOR PREPARATION. IT WAS NOT KNOWN WHEN THE DOCUMENTS WOULD BE READY FOR GENERAL DISTRIBUTION.

THE FOUR COMMITTEES ALREADY HAVE THE FULL 47 VOLUME TEXT INCLUDING THE CLASSIFIED PORTIONS BUT ONLY MEMBERS OF CONGRESS WERE ALLOWED ACCESS TO THE SECRET PORTIONS.

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24 SEP 30 1971

WASHINGTON CAPITAL NEWS SERVICE

65-74060-24

Secret Papers Figure Feted by U.S. Workers

By J. Y. Smith

Special to The Washington Post

More than 900 persons, most of them government employees and one a member of the Federal Communications Commission, turned out last night to pay homage to Daniel Ellsberg, the man who made public the Pentagon papers.

Said Ellsberg: "I admire you for being here. I made notes for a very depressed crowd, but I have had the feeling since I first stepped into this room that this is a celebration. 'You've certainly given me something to be happy about.'"

The tribute was organized by a group called Federal Employees for Peace. According to Susan Strauss, chairman of the group's coordinating committee, FEP has no membership lists, no dues, no newsletter and no office.

Miss Strauss, an employee of the U.S. Commission on Civil Rights, said the idea of honoring Ellsberg has been in the works since June. Regarding the release of the Pentagon

papers concerning the history of U.S. decision-making in Vietnam by Ellsberg, she said:

"We believe that people should do this kind of thing. We are also against secrecy and believe that policy decisions should not be made in secrecy."

Miss Strauss said 920 persons had paid \$5.50 for dinner at the La Gemma restaurant, 1320 G St. NW., to show that they agreed with her.

Prominent among them was Nicholas Johnson, outspoken member of the FCC.

"I have a different problem from Dan's," Johnson told the audience. "I've been looking for some classified documents over at the FCC, but the problem there is that they just keep doing it out in the open."

In a more serious vein, he urged his listeners to make their own "moral decisions"

as Ellsberg had in regard to the publication of the classified material.

Sen. Mike Gravel (D-Alaska) was to have been there but had a prior engagement in New York. He sent a telegram saying that Ellsberg's actions "have been in the highest tradition of American patriotism."

Ellsberg has been indicted by the federal government on charges of unlawful possession of the Pentagon study and of converting the study to his own use by giving it to the press. He has pleaded innocent and a hearing in federal court in Los Angeles has been set for Jan. 4.

Ellsberg told reporters that his last visit to Washington was July 28, when he met with 17 congressmen. The time before that, he said, was during the Mayday demonstrations, when antiwar groups tried to paralyze Washington by tying up traffic.

Organizers of the dinner presented Ellsberg with a large papier mache model of a rubber stamp with the word "declassified" printed on the side. They also gave him a scroll which had printed on it a statement that is tacked up in all government buildings. It reads in part: "Put loyalty to the highest moral principles and to country above loyalty to persons, party or government department."

Then Ellsberg, a former employee of the Defense Department and the Rand Corp., began to describe why he had made the war study public.

Decisions on matters of war and peace should not be made in secrecy, he said. "The Pentagon papers do show that this is a criminal war."

He compared the Pentagon papers to the Nuremberg war criminal documents of World War II,

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"It is intolerable and outrageous," he said, that draft resisters and other persons who have resisted the war in a nonviolent way should be in prison while the war goes on.

Ellsberg said that his usual remarks on Vietnam were aimed at "a very depressed crowd." He said he had a set of such notes for last night's talk, but that he had discarded them because of the good mood of the audience.

Miss Strauss said the tribute, like other FEP activities, was organized largely through volunteers who passed out leaflets to government workers.

She said that the average government grade of those at the meeting was probably GS-12, meaning that those in attendance make more than \$13,000 a year.

Miss Strauss said the audience was drawn from the full spectrum of government departments and agencies.

She said that the peace movement seemed to find support in agencies such as the Department of Health, Education and Welfare, the Labor Department and the National Institutes of Health.



DANIEL ELLSBERG
"a celebration"



By Harry Naltchayan—The Washington Post

Daniel Ellsberg displays huge papier mache "declassified" stamp and plaque.

FETED BY EX-COLLEAGUES

The Ellsberg Happening

By MARY McGRORY
Star Staff Writer

Point of View

It was a far cry from the usual bureaucratic assemblage called to fete the faithful servant completing 50 years of making a superior contribution to the suggestion box.

At La Gemma restaurant were 1,000 government workers from 25 agencies, defiantly honoring a super-grade ex-colleague who is under federal indictment for breaking the rules they live by.

The emotion was richer than the \$5.50 dinner, which had of course the sauce of danger, and mutual admiration ran high as Daniel Ellsberg met the Federal Employees for Peace.

Glistening Eyes

Their supervisors could hardly have approved such flouting of authority. Nor could Cabinet chiefs, and certainly not a president who likes people in neat, conforming rows. But they stood up with glistening eyes to greet him, proud of their own cheek, proud of being in the same room with the man who had kicked their temple and raided it of secret treasures. He told them that reading 7,000 pages of the Pentagon papers had persuaded him that "the U.S. President is part of the problem." They cheered.

A young lawyer from the Justice Department, which is prosecuting Ellsberg, had not sold many tickets — colleagues told him he was guilty of "conflict of interest" — but he said, "One of the things we

are trying to do is to help people feel more free."

The turnout had overwhelmed both the sponsors and the star. They were forbidden the use of department bulletin boards, and had handed out leaflets at agencies. At State, one ticket seller was told, "Ellsberg should be hung." They were run out of the Pentagon.

Many From HEW

The largest delegation was from Health Education and Welfare, because as Katherine Wolpe of the National Institutes of Health, sitting at the head table, explained, "We are supposed to help people, and the war is against human beings."

Ellsberg was elated at the crowd, the reception, the huge papier mache "Declassified" stamp they gave him and the citation "in grateful recognition of distinguished service to the American people."

"Brothers and sisters," he called them and said he admired them and was proud of them. He had prepared a speech for a "very depressed crowd of people with paper bags over their faces."

"I feel this is a celebration," he said, and it certainly seemed that way.

He spoke to them in their own language intimately, fraternally and at length. He told them of making reports with different-colored pencils as a

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The National Observer _____
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Maxine in the Mediterranean. He told them of military exercises that never occurred when he was a war planner in Vietnam, of drawing up charts of South Vietnam patrols, and villages to be pacified that never were.

Visit to Prison

He spoke also somberly of prisons. He told a long anecdote of visiting his friend and colleague Anthony Russo, who is under civil contempt charges for refusing to talk about the Pentagon papers, in the Los Angeles jail. Russo was lying on his stomach in an isolation cell with arms and legs manacled.

The guard told him, "I admire Russo's guts, and I admire your guts, and I wish I had the same kind of guts."

Ellsberg said reflectively, "I don't think prison is a place for anyone."

He had once in his hawk phase, rejected the notion of Vietnam as "a mirror of our society." Now he thinks Attica is a mirror.

In prison, you have the perfect bureaucracy, he said, where violence is done to people not regarded as human beings or citizens, by officials operating in total secrecy and not accountable to anyone.

He spoke of the futility of the risk he had taken. He had hoped his willingness to put his body on the line might "rub off" on high officials in the government, in the Congress in the courts.

Some Even Arrested

His listeners stirred sympathetically. They have in their regulated lives marched, petitioned and sung to get the government's attention. Some, like Madeleine Gold of HEW, were arrested on May Day, all to no avail.

What he had hoped might come out of resistance, he said, was "individuals in this society who do not see themselves as inmates or powerless."

He went on for an hour and 45 minutes, and some complained of the overtime. But many went up to shake his hand and thank him and to say he had shown them, as one State Department man said, "how this works in our little daily sellouts."

A Capitol Hill secretary said, "You know it was amazing, they all swarmed out of their cubbyholes, they knew there'd be loads of FBI, and they came anyway. I think they were surprised at how many of them there are in the government."

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UPI-4³
 (ELLSBERG)

WASHINGTON --DR. DANIEL ELLSBERG, WHO COULD FACE A PRISON SENTENCE HIMSELF, SAYS THE NATION'S PENAL SYSTEM IS "OUTRAGEOUS" AND "NO PLACE FOR ANYBODY."

ELLSBERG, A ONE-TIME PENTAGON EMPLOYEE, IS UNDER INDICTMENT FOR PROVIDING DOCUMENTS FROM THE "PENTAGON PAPERS" -- A SECRET STUDY OF THE VIETNAM WAR -- TO THE PRESS.

ELLSBERG THREW AWAY A PREPARED SPEECH THURSDAY NIGHT AT A TESTIMONIAL DINNER GIVEN BY AN ANTIWAR GOVERNMENT WORKER ORGANIZATION CALLED FEDERAL EMPLOYEES FOR PEACE, AND LASHED OUT AT PRISONS.

HE DESCRIBED THE PENAL SYSTEM AS "THE PERFECT BUREAUCRACY ... WHERE VIOLENCE BY OFFICIALS IS USED AGAINST PEOPLE NOT SEEN AS CITIZENS OR REALLY AS HUMANS."

"YOU SEE WHAT AMERICANS CAN DO WHEN PROTECTED FROM OBSERVATION BY THEIR FELLOW PUBLIC," HE SAID IN REFERENCE TO SUPPRESSING OF A PRISON REBELLION AT ATTICA STATE PRISON IN NEW YORK.

"ATTICA AND VIETNAM ARE MIRRORS ... OF BUREAUCRACY THAT EXIST WHEN OFFICIALS HAVE A LIMITED SENSE OF RESPONSIBILITY THAT IS EFFECTED BY A CLOAK OF SECRECY."

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FETED BY EX-COLLEAGUES

A Happening for Ellsberg

By MARY McGRORY
 Star Staff Writer

Point of View

It was a far cry from the usual bureaucratic assemblage called to fete the faithful servant completing 50 years of making a superior contribution to the suggestion box.

At La Gemina restaurant were 1,000 government workers from 25 agencies, defiantly honoring a super-grade ex-colleague who is under federal indictment for breaking the rules they live by.

The emotion was richer than the \$5.50 dinner, which had, of course, the sauce of danger, and mutual admiration ran high as Daniel Ellsberg met the Federal Employees for Peace.

Glistening Eyes

Their supervisors could hardly have approved such flouting of authority. Nor could Cabinet chiefs, and certainly not a president who likes people in neat, conforming rows. But they stood up with glistening eyes to greet him, proud of their own cheek, proud of being in the same room with the man who had kicked their temple and raided it of secret treasures. He told them that reading 7,000 pages of the Pentagon papers had persuaded him that "the U.S.

President is part of the problem." They cheered.

A young lawyer from the Justice Department, which is prosecuting Ellsberg, had not sold many tickets — colleagues told him he was guilty of "conflict of interest" — but he said, "One of the things we are trying to do is to help people feel more free."

The turnout had overwhelmed both the sponsors and the star. They were forbidden the use of department bulletin boards, and had handed out pamphlets at agencies. At State, one ticket seller was told, "Ellsberg should be hung." They were run out of the Pentagon.

The largest delegation was from Health Education and Welfare, because as Kathesine Wolpe of the National Institutes of Health, sitting at the head table, explained, "We are supposed to help people, and the war is against human beings."

Ellsberg was elated at the crowd, the reception, the huge papier mache "Declassified" stamp they gave him and the citation "in grateful recognition of distinguished service to the American people."

"Brothers and sisters," he called them and said he admired them and was proud of them. He had prepared a speech for a "very depressed crowd of people with paper bags over their faces."

"I feel this is a celebration," he said, and it certainly seemed that way.

He spoke to them in their own language intimately, fraternally and at length. He told them of making reports with different-colored pencils as a Marine in the Mediterranean. He told them of military exercises that never occurred when he was a war planner in Vietnam, of drawing up charts

of South Vietnam patrols, and villages to be pacified that never were.

Visit to Prison

He spoke also somberly of prisons. He told a long anecdote of visiting his friend and colleague, Anthony Russo, who is under civil contempt charges for refusing to talk about the Pentagon papers, in the Los Angeles jail. Russo was lying on his stomach in an isolation cell with arms and legs manacled.

The guard told him, "I admire Russo's guts, and I admire your guts, and I wish I had the same kind of guts."

Ellsberg said reflectively, "I don't think prison is a place for anyone."

He had once, in his hawk phase, rejected the notion of Vietnam as "a mirror of our

society." Now he thinks Attica is a mirror.

In prison, you have the perfect bureaucracy, he said, where violence is done to people not regarded as human beings or citizens, by officials operating in total secrecy and not accountable to anyone.

He spoke of the futility of the risk he had taken. He had hoped his willingness to put his body on the line might "rub off" on high officials in the government, in the Congress in the courts.

His listeners stirred sympathetically. They have in their regulated lives marched, petitioned and sung to get the government's attention. Some, like Madeleine Gold of HEW, were arrested on May Day, all to no avail.

What he had hoped might come out of resistance, he said, was "individuals in this society who do not see themselves as inmates or powerless."

He went on for an hour and 45 minutes, and some complained of the overtime. But many went up to shake his hand and thank him and to say he had shown them, as one State Department man said, "how this works in our little daily sellouts."

A Capitol Hill secretary said, "You know it was amazing, they all swarmed out of their cubbyholes, they knew there'd be loads of FBI, and they came anyway. I think they were surprised at how many of them there are in the government."

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Date 9-21-71



—United Press International

PAPERS SEIZED

FBI agents cart away cases containing the material stored by "Pentagon papers" figure Dr. Daniel Ellsberg in a Beverly Hills warehouse. Some 28 cases were seized yesterday after a federal judge issued a search warrant.

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Like knew the risks of U-2

NEW YORK (UPI)—President Eisenhower personally reviewed all U-2 spy missions over the Soviet Union, including the ill-fated flight of Francis Gary Powers, Dr. Daniel Ellsberg said yesterday.

The former Defense Department analyst who leaked the Pentagon papers on the Vietnam war said in an interview in Look magazine he learned of Mr. Eisenhower's involvement while studying the decision-making process in crises.

The downing of Mr. Powers' U-2 reconnaissance plane by the Russians in 1960 shortly before a planned summit conference between Gen. Eisenhower and Soviet Premier Nikita Khrushchev prompted Mr. Khrushchev to cancel the summit. The administration was widely criticized for endangering the meeting by the ill-timed flight.

"Most Americans assumed that Gen. Eisenhower had not known of the flight, certainly not in detail," Dr. Ellsberg said. "I think most people believed this on two grounds: That there's a lot that goes on that no President knows about in detail and that Gen. Eisenhower knew even less than most Presidents because he was always on the golf course."

But, Dr. Ellsberg said, he learned differently from "the man who was in charge of the U-2 program from beginning to end."

"He said that President Eisenhower went over the flight plan of every U-2 flight over Russia in the greatest detail, which usually occupied no less than four or five hours. He said that for every flight of the U-2 over Russia, he brought the detailed flight plans with the full schedule to the White House for President Eisenhower, and in no case did Gen. Eisenhower fail to make some modifications," Dr. Ellsberg said.

In Los Angeles, the government gained access yesterday to a large collection of papers and personal possessions Dr. Ellsberg had stashed in a storage warehouse in Beverly Hills.

Justice Department attorney David Nissen said last week that many of the stored documents Dr. Ellsberg's attorneys have insisted they are their client's personal papers.

Two agents for Dr. Ellsberg said they were at the warehouse trying to claim the goods when the warrant was served.

One of Dr. Ellsberg's defense attorneys, Morse Taylor, had asked a judge to freeze the property, saying the government was "on a blanket fishing expedition" hoping to turn up evidence to be used in Dr. Ellsberg's trial.

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Defense Acts To Edit Some Of Viet Study

By Sanford J. Ungar

Washington Post Staff Writer

The Pentagon has intervened with a Boston publisher in an attempt to have some sections deleted from a nearly complete but officially unauthorized edition of its secret study of the Vietnam war.

The book is scheduled for release Oct. 17.

Two men, identifying themselves as part of a "special team" working with J. Fred Buzhardt, general legal counsel to Defense Secretary Melvin R. Laird, made an unannounced visit to the Boston headquarters of Beacon Press on Friday morning, seeking the publisher's cooperation with the government.

Arnold Tovell, editor in chief at Beacon, confirmed yesterday that a second meeting has been scheduled for Monday morning in Boston, when three other representatives from the Pentagon will specify the parts of the study the Defense Department would like deleted.

Tovell said the firm would not alter its plans before consulting with Sen. Mike Gravel (D-Alaska), who provided the Pentagon papers for Beacon's four-volume edition.

Reportedly consisting of 95 per cent of the secret Vietnam war narrative, the Beacon edition is formally billed as the official record of a special subcommittee hearing called by Gravel at midnight on June 29 for the specific purpose of releasing the Pentagon papers.

Sources at Beacon said yesterday that should a decision be made to delete parts of the study, blank pages might be left in the book to mark the omissions.

Scheduled for an initial printing of about 15,000 copies in paperback and 5,000 in hard cover, the Beacon book is already in production at an estimated cost of \$100,000.

When published, it is expected to be the "only" version of almost the entire Pentagon study (including 25 per cent of the internal government documents that accompanied it) which is generally available to the public. Despite a Supreme Court decision in June affirming the right of The Washington Post, The New York Times and other newspapers to publish articles based on the study, the Defense Department has continued to refuse to release it.

The two Defense Department representatives, Robert L. Jones and Paul T. Spalla, who wore civilian clothes, appeared at the publisher's office next to the statehouse in Boston with a letter of introduction from Buzhardt.

As Tovell described them yesterday, "they went out of their way to make it clear they were not lawyers and were not from the Justice Department."

But he added that Jones and Spalla refused to specify their titles in the Defense Department. A check with the Pentagon press office and other sources yesterday failed to turn up anyone by those names in the general legal counsel's office.

During a half-hour session with Tovell, Beacon Press director Gobin Stair, two other Beacon officials and two attorneys representing the publishers, the men said they were "part of a team checking into the Pentagon papers generally," one of the participants in the meeting said yesterday.

Jones and Spalla did not ask to see any of the galley proofs of the book, Beacon attorney Harvey A. Silverglade said, but "seemed to be on a diplomatic mission. They didn't seem to know much about the Pentagon papers."

The two Pentagon emissaries stressed, however, that they were concerned not about avoiding political embarrassment that might result from the book, but were concerned about matters concerning intelligence which might be revealed.

They did not specify which parts of the study were considered dangerous, leaving that to three others—whom they did not identify—with "intimate knowledge" of the Vietnam war study.

Beacon agreed to the second meeting on Monday, Silverglade said, because "they are willing to listen as citizens and reasonable men."

Gravel, reached yesterday, stressed that under his agreement with Beacon, "I have editorial control over what's in there. I'd be happy to re-evaluate any or all of it."

The senator, who has contended that the administration is seeking to interfere with his plans for the Pentagon papers, said "maybe they should have contacted me to go over anything they feel is sensitive and should not be released."

It also was learned yesterday that Howard R. Webber, Director of the MIT Press, had been summoned to Washington last week for a meeting with Buzhardt's office.

Webber, who was approached with Gravel's copy of the Pentagon papers before Beacon press, a nonprofit publishing arm of the Unitarian-Universalist Association, said at the he "found it puzzling" that he had been questioned about the nature of the Beacon edition.

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ELLSBERG 9-20 HC

NIGHT LD

LOS ANGELES (UPI)--THE FEDERAL GOVERNMENT, IN A SERIES OF LEGAL MANEUVERS WITH AN ASSIST FROM THE FBI, WAS GIVEN ACCESS MONDAY TO PERSONAL POSSESSIONS OF DANIEL ELLSBERG WHICH HE HAS IN STORAGE.

ELLSBERG, UNDER INDICTMENT IN THE PENTAGON PAPERS CONTROVERSY, FAILED IN AN ATTEMPT TO QUASH A GOVERNMENT SEARCH SUBPENA INVOLVING HIS BELONGINGS HELD BY BEKINS MOVING AND STORAGE COMPANY.

U.S. DISTRICT JUDGE WILLIAM M. BYRNE JR. MADE A CONDITIONAL RULING MONDAY MORNING PROHIBITING THE GOVERNMENT FROM EXAMINING THE BELONGINGS. BYRNE GAVE THE GOVERNMENT UNTIL NOON TO FILE NOTICE OF APPEAL ON HIS RULING. IN THE MEANTIME, FBI AGENTS SERVED A WARRANT ON OPERATORS OF BEKINS WAREHOUSE IN BEVERLY HILLS WHERE ELLSBERG'S GOODS ARE STORED. IN AN AFTERNOON COURT SESSION, BYRNE SAID ELLSBERG HAD NO LEGAL RECOURSE TO PREVENT THE FBI'S MOVE AND HE COULD NOT OVERRULE ISSUANCE OF THE WARRANT BY A U.S. MAGISTRATE.

THE GOVERNMENT WAS REPRESENTED BEFORE JUDGE BYRNE BY ASSISTANT U.S. ATTORNEY DAVID R. NISSEN WHO DECLINED TO DISCLOSE WHAT PROPERTY WAS SPECIFIED IN THE WARRANT.

LAST WEEK NISSEN SAID THE GOVERNMENT WANTED TO EXAMINE SEVERAL METAL CASES, A CARDBOARD CARTON, SEVERAL BOOKS AND A FOOTLOCKER.

BYRNE SAID, HOWEVER, THE GOVERNMENT HAD PRESENTED NO PROOF THAT ANY OF THESE ITEMS WERE GOVERNMENT PROPERTY.

MORSE TAYLOR, ATTORNEY FOR ELLSBERG, SAID THE GOVERNMENT WAS "ON A BLANKET FISHING EXPEDITION" HOPING TO TURN UP EVIDENCE TO BE USED IN ELLSBERG'S TRIAL.

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WASHINGTON CAPITAL NEWS SERVICE

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ELLSBERG IS SCHEDULED TO GO ON TRIAL EARLY NEXT YEAR ON CHARGES HE TOOK SECRET GOVERNMENT PAPERS WHILE HE WORKED AS A RESEARCHER AT THE RAND CORPORATION IN SANTA MONICA AND MADE PERSONAL USE OF THEM--THAT IS, RELEASED SOME OF THEM TO NEWSPAPERS.

IN THE RESULTANT FURORE, THE DOCUMENTS BECAME KNOWN AS THE PENTAGON PAPERS BECAUSE THEY CONTAIN SECRET INFORMATION OF U.S. PLANS IN THE VIETNAM WAR.

ELLSBERG'S ATTORNEYS ASKED BYRNE TO APPROVE A MOTION TO SUPPRESS EVIDENCE--THAT IS, FREEZE THE BELONGINGS IN THE HANDS OF THE FBI.

BYRNE REFUSED TO ACT, SAYING A MOTION TO SUPPRESS WAS "PREMATURE, BECAUSE THERE IS NOTHING FOR ME TO SUPPRESS."

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UPI-34

(ELLSBERG)

LOS ANGELES --IN A SERIES OF LEGAL MANEUVERS, THE FEDERAL GOVERNMENT GAINED ACCESS MONDAY TO A LARGE COLLECTION OF PAPERS AND PERSONAL POSSESSIONS STASHED IN A STORAGE WAREHOUSE BY DR. DANIEL ELLSBERG.

ELLSBERG, PRINCIPAL FIGURE IN THE PENTAGON PAPERS' CONTROVERSY, FAILED IN AN ATTEMPT TO QUASH AN FBI SEARCH WARRANT INVOLVING HIS BELONGINGS HELD BY BEKINS MOVING AND STORAGE CO. IN BEVERLY HILLS.

JUSTICE DEPARTMENT ATTORNEY DAVID R. NISSEN SAID LAST WEEK THAT MANY OF THE STORED DOCUMENTS WERE CLASSIFIED GOVERNMENT RECORDS BUT ELLSBERG'S ATTORNEYS HAVE INSISTED THEY ARE PERSONAL PAPERS OF THEIR CLIENT.

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WASHINGTON CAPITAL NEWS SERVICE

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ELLSBERG 9-8 NX

LOS ANGELES (UPI)--ATTORNEYS FOR DANIEL ELLSBERG, ACCUSED OF UNAUTHORIZED POSSESSION AND THEFT OF THE PENTAGON PAPERS, ATTEMPTED TUESDAY TO QUASH A SUBPOENA FOR RECORDS HE REPORTEDLY HAS IN STORAGE.

THE SUBPOENA, ISSUED BY A SECRET FEDERAL GRAND JURY, CAME TO LIGHT IN PROCEEDINGS BEFORE U.S. DISTRICT COURT JUDGE MATT BYRNE.

A SPOKESMAN FOR THE U.S. ATTORNEY'S OFFICE IN LOS ANGELES SAID THE SUBPOENA WAS SERVED BY BEKINS VAN & STORAGE CO. FOR RECORDS UNDER THE NAME OF DANIEL ELLSBERG.

THE SUBPOENA, ACCORDING TO THE SPOKESMAN INVOLVES A GRAND JURY INVESTIGATION DISTINCT FROM THAT WHICH RESULTED IN ELLSBERG'S INDICTMENT. CALIF

THE MOTION TO STOP THE SUBPOENA WAS FILED BY ATTORNEY ARTHUR BERMAN. HE SAID IT SHOULD BE QUASHED BECAUSE THE GRAND JURY INVESTIGATION MUST BE RELATED TO THE PRESENT CHARGES AGAINST ELLSBERG. MEANWHILE, A BEKINS OFFICIAL APPEARED BEFORE THE JURY FOR ABOUT 15 MINUTES TUESDAY, BERMAN SAID.

JUDGE BYRNE SET A HEARING ON THE MATTER FOR NEXT TUESDAY. THE SECRET PAPERS, LEAKED TO SEVERAL NEWSPAPERS, TRACED THE UNITED STATES' INVOLVEMENT IN VIETNAM. ELLSBERG CURRENTLY FACES TRIAL WITH HIS NEXT COURT APPEARANCE SCHEDULED FOR JAN. 4, 1972.

IN OTHER DEVELOPMENTS IN THE CASE, A COLLEAGUE OF ELLSBERG, ANTHONY J. RUSSO, PETITIONED U.S. DISTRICT COURT JUDGE WILLIAM P. GRAY FOR RELEASE FROM PRISON ON CONTEMPT CHARGES.

RUSSO, WHO WORKED WITH ELLSBERG AT THE RAND CORP., IN SANTA MONICA, CALIF. WHERE THE PAPERS WERE ALLEGEDLY TAKEN AND LATER COPIED, WAS JAILED FOR REFUSING TO TESTIFY BEFORE THE GRAND JURY.

RUSSO SAID HE WAS IMPRISONED ONLY FOR THE LIFE OF THE GRAND JURY, WHICH SHOULD BE EXPIRING SOON.

THE PETITION SAID THE GRAND JURY INVESTIGATING THE CASE WAS A "REGULAR" GRAND JURY EMpaneled TWICE A YEAR FOR SIX-MONTH TERMS. THE JURY WAS EMpaneled ABOUT MARCH 1.

RUSSO SAID ANY EXTENSION OF THE GRAND JURY TERM WOULD DENY HIM EQUAL PROTECTION OF THE LAW AND WAS DESIGNED TO PUNISH HIM. GRAY SET A HEARING FOR FRIDAY.

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UPI-193

(GRAVEL)

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WASHINGTON--SEN. MIKE GRAVEL, D-ALASKA, CHARGING AN ATTEMPTED INVASION OF THE LEGISLATIVE BRANCH BY THE EXECUTIVE, SAID TODAY HE WOULD GO TO COURT IN BOSTON FRIDAY TO ASK THAT A SUBPOENA AGAINST HIS ASSISTANT BE QUASHED.

GRAVEL TOLD UPI HE WOULD APPEAR BEFORE U.S. DISTRICT JUDGE ARTHUR GARRITY TO ASK THAT HIS AIDE, DR. LEONARD RODBERG, BE RELIEVED FROM TESTIFYING BEFORE A GRAND JURY IN CONNECTION WITH THE PUBLICATION OF THE PENTAGON PAPERS. GARRITY IS TO RULE ON THE ISSUE FRIDAY.

GRAVEL, AT A MIDNIGHT SESSION OF A SENATE PUBLIC WORKS SUBCOMMITTEE JUNE 29, READ PORTIONS OF THE PENTAGON STUDY INTO THE PUBLIC RECORD. HE HIRED RODBERG AS A SUBCOMMITTEE STAFF MEMBER THAT NIGHT.

GRAVEL SAID HE HAD NOT BEEN SUBPOENAED BY THE GRAND JURY. THE JUSTICE DEPARTMENT, HOWEVER, CONTENDS GRAVEL CANNOT INVOKE LEGISLATIVE IMMUNITY IF HE IS CALLED.

THE ALASKA SENATOR SAID HE WOULD APPEAR VOLUNTARILY BEFORE GARRITY AND HAD NOT BEEN CALLED TO TESTIFY.

GRAVEL CONTENDED THAT IF RODBERG IS SUBPOENAED, IT WOULD BE "AN INVASION OF THE THIRD ARM OF GOVERNMENT BY THE EXECUTIVE ... IT WOULD BE A VERY HISTORIC EVENT WERE IT TO TAKE PLACE."

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WASHINGTON CAPITAL NEWS SERVICE

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UPI-143

(PENTAGON PAPERS) *MASS*

WASHINGTON--THE PENTAGON SAID TODAY IT HAD TRIED AND FAILED TO FIND OUT FROM BEACON PRESS WHAT PORTIONS OF A SECRET VIETNAM WAR STUDY THE BOSTON PUBLISHER INTENDS TO ISSUE IN BOOK FORM NEXT MONTH.

DEFENSE DEPARTMENT SPOKESMAN JERRY W. FRIEDHEIM, HOWEVER, DENIED REPORTS THERE HAD BEEN ANY ATTEMPT TO GET THE PUBLISHER TO DELETE PORTIONS OF THE STUDY. HE SAID THE PENTAGON "AT THIS POINT" PLANS NO FURTHER ACTION IN RELATION TO THE BOOK.

THE BOOK, SCHEDULED FOR RELEASE OCT. 17, REPORTEDLY CONTAINS 95 PER CENT OF THE NARRATIVE AND 25 PER CENT OF THE SUPPORTING DOCUMENTS FROM THE PENTAGON PAPERS ORDERED COMPILED BY FORMER DEFENSE SECRETARY ROBERT S. MCNAMARA DURING HIS LAST DAYS IN OFFICE.

SENATOR MIKE GRAVEL, D-ALASKA, PROVIDED BEACON WITH THE PAPERS FOR THE FOUR VOLUME EDITION. THE BOOK IS FORMALLY BILLED AS THE RECORD OF A MIDNIGHT SESSION OF A SPECIAL SENATE SUBCOMMITTEE HEARING GRAVEL CALLED JUNE 29 FOR THE EXPRESS PURPOSE OF RELEASING THE WAR STUDY.

FRIEDHEIM SAID TWO REPRESENTATIVES OF J. FRED BUZHARDT, GENERAL LEGAL COUNCIL FOR THE DEPARTMENT OF DEFENSE, MET WITH EXECUTIVES OF BEACON PRESS FRIDAY AND "ASKED THEM IF THEY CARED TO ADVISE US WHAT PORTIONS OF THE STUDY THEY PLANNED TO PUBLISH."

HE SAID THE BEACON EXECUTIVES DECLINED TO DO SO, AND THAT BUZHARDT HAS DECIDED AGAINST ANY FURTHER MEETINGS WITH THE PUBLISHER.

ASKED IF BUZHARDT INTENDED TO REFER THE MATTER TO THE JUSTICE DEPARTMENT IN AN ATTEMPT TO GET PUBLICATION OF THE BOOK STOPPED OR GET PORTIONS REMOVED FROM IT, FRIEDHEIM REPLIED: "AT THIS POINT WE HAVE MADE NO REPRESENTATIONS TO JUSTICE. AT THE MOMENT I HAVEN'T SEEN ANY INDICATION THAT WE'RE DOING THAT."

WHEN THE NEW YORK TIMES AND THE WASHINGTON POST BEGAN PRINTING ARTICLES BASED ON THE SAME WAR STUDY THIS SPRING, THE JUSTICE DEPARTMENT TRIED UNSUCCESSFULLY TO HAVE CONTINUED PUBLICATION OF THEIR STORIES PERMANENTLY BLOCKED BY THE COURTS BECAUSE THE STUDY WAS CLASSIFIED TOP SECRET.

EX-102

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WASHINGTON CALL CASE NEWS SERVICE

File 510-974

BOSTON--THE DEFENSE DEPARTMENT CHANGED ITS MIND TODAY ABOUT INSPECTING THE PROOFS OF SEN. MIKE GRAVEL'S BOOK ON THE PENTAGON PAPERS, APPARENTLY BECAUSE IT WAS REFUSED PERMISSION TO DELETE SECTIONS IT THOUGHT SENSITIVE TO NATIONAL SECURITY.

THE PENTAGON CANCELED A MEETING WITH THE EDITORIAL STAFF OF THE BEACON PRESS AFTER THE FIRM SAID IT WOULD NOT GRANT AUTHORITY FOR THE PENTAGON TO MAKE DELETIONS.

GEORGE DAWSON, MARKETING MANAGER FOR BEACON PRESS, SAID J. FRED BUZHARDT, GENERAL COUNSEL FOR THE DEFENSE DEPARTMENT, TOLD HIM THE DEPARTMENT "WANTED TO EXAMINE WHAT WE WERE GOING TO PUBLISH... AND SUGGEST DELETIONS. WE SAID NO, SO THEY CANCELLED THE MEETING."

TED JOHNSON, AN AIDE TO THE ALASKA DEMOCRAT, SAID GRAVEL'S AGREEMENT WITH THE PUBLISHER GAVE THE SENATOR THE SOLE AUTHORITY OVER ITS EDITORIAL CONTENT.

DAWSON SAID THE DEFENSE DEPARTMENT APPARENTLY FELT THAT TO INSPECT THE BOOK WITHOUT THE POWER TO DELETE CERTAIN SECTIONS MIGHT IMPLY PENTAGON APPROVAL OF THE MATERIAL'S PUBLICATION.

9-20--EH333PED

TIMES IS CRITICIZED ON PENTAGON PAPERS

Leslie H. Gelb, coordinator of the Pentagon team that put together the secret study of the war in Vietnam, wrote in this week's Life magazine that he had "two serious criticisms" of The New York Times articles dealing with the study but that the articles "were largely a fair representation."

Mr. Gelb, writing in the issue dated Sept. 17, said that The Times "should have stated explicitly that President Johnson before the 1964 elections was not part of the general consensus in our Government to bomb North Vietnam." He said, "Our studies . . . depict him as quite resistant to this course."

The Times's articles, Mr. Gelb wrote, "give a misleading view of C.I.A. findings."

"While the C.I.A. was argu-

ing that the bombing of the North was having the opposite of the desired effects, as the Times revealed," he wrote, "it was not nearly as pessimistic about the war in the South."

The Pentagon papers, Mr. Gelb wrote, have lessons to teach us about Vietnam and, more importantly, about how foreign policy is made in our nation—lessons which, I believe, are still unlearned.

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The Washington Post
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SEP 13 1971

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Gravel Won't Be Prosecuted, U.S. Official Sources Indicate

By LYLE DENNISTON

Star Staff Writer

Sen. Mike Gravel, D-Alaska, is not in legal trouble for making public part of the secret Pentagon papers, official sources here say.

These sources indicated there is little or no chance that the senator would be prosecuted, and he may not even be summoned to testify at an investigation into disclosure of the 47-volume Pentagon study of the Vietnam war's origins.

Earlier this week, a Justice Department memorandum filed in U.S. District Court in Boston contended that Gravel could not claim legal immunity over his reading from the study at a midnight Senate subcommittee hearing June 29.

Not a Signal

The document raised, for the first time, the possibility that Gravel might be the subject of a federal criminal case.

However, department sources insist that the memorandum was not designed to signal a case against the senator. The parts of the document discussing the immunity issue were written primarily to emphasize that an aide to Gravel, not Gravel himself, could not avoid an appearance before the federal grand jury in Boston, these officials declared.

A subpoena has been issued to compel Leonard S. Rodberg, a temporary assistant to Gravel, to testify before the grand jury. The jury has been in session nearly two months, conducting an apparently far-ranging investigation into the release of the papers, by newspapers as well as by Gravel.

It is not known exactly why Rodberg has been summoned, but it is assumed here that the

jury wants to ask him about preparations to publish in book form a transcript of the hearing at which Gravel read from the papers.

Hearing Set Today

U.S. District Judge W. Arthur Garrity was scheduled to hold a hearing in Boston today on an attempt by lawyers for the senator and for Rodberg to block Rodberg's subpoena.

The senator has written to his Senate colleagues that he considers the subpoena of a Senate aide a threat to senatorial independence.

In its brief this week, defending the Rodberg subpoena, the Justice Department argued that Gravel's midnight reading of portions of the papers "cannot be above scrutiny by those charged to enforce the criminal statutes."

It contended that he was not "engaged in official subcommittee business," and thus cannot rely on the legal immunity normally enjoyed by lawmakers in their official duties.

That argument implied that the department was defending its authority at least to investigate Gravel's actions.

But the memorandum went even farther, appearing to raise a threat even of criminal prosecution.

Publication an Issue

Even if Gravel did have legal immunity for his reading at the hearing, the department contended, "his subsequent negotiations for and contracting for the publication of the Pentagon papers divested him of whatever privilege he may have had."

Acknowledging that the Senate itself has done nothing to discipline Gravel, sources indicated the government would not

strike out against him on its own.

The department, in general, has taken the position that members of Congress are liable to criminal prosecution only in very narrow areas of their activities while they hold public office.

It is currently taking just such a limited position in a major test case now awaiting action in the Supreme Court. That case, involving an attempt by the government to prosecute former Sen. Daniel Brewster, D-Md., on charges of taking a bribe, is scheduled for a hearing in the Supreme Court in mid-October.

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65-74060-Sub A

51 SEP 23 1971

(Mount Clipping in Space Below)

Gravel May Face Papers Leak Probe

By ELLEN BESWICK

WT Washington Bureau

WASHINGTON — The Justice Department yesterday claimed that Sen. Mike Gravel's action in reading portions of the top secret "Pentagon Papers" and subsequently having them published was "far removed from legitimate congressional business" and could be the subject of a criminal investigation.

In a brief filed in Federal District court in Boston, the Justice Department defended its attempt to call physicist Leonard S. Rodberg, an aide to the Alaska Democrat, before a federal grand jury allegedly investigating possible criminal actions involved in the leaking of the Vietnam War report. The government contended that Rodberg was not a bona fide member of the senator's staff, and even if he were the Constitution does not protect members of Congress in cases of "treason, felony and breach of the peace."

Meanwhile, Sen. Gravel, disclosed through his Washington office that he is seeking support from other senators against what he called an attack on the constitutional immunity of members of the Congress in pursuit of their duties. A spokesman said Gravel was soliciting affidavits from his colleagues to support his position. He was expected to return from Alaska to make a speech on the subject on the Senate floor today.

The government brief was filed in answer to the attempts of Gravel and Rodberg last week to have a subpoena for

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(Indicate page, name of newspaper, city and state.)

THE BOSTON GLOBE
BOSTON, MASS.

THE BOSTON HERALD
TRAVELER
BOSTON, MASS.

THE BOSTON RECORD
AMERICAN
BOSTON, MASS.

Date: 9/9/71
Edition: Morning
Author: Ellen Beswick
Editor: John Herbert
Title: MC LEK

NATIONALITIES

Character: INTELLIGENCE
or Espionage

Classification: 65-5236 sub 1
Submitting Office: Boston

☐ Being Investigated

EX-102

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Rodberg quashed. Judge W. Arthur Garrity will hear oral arguments on the case tomorrow.

Rodberg had been subpoenaed to appear before a secret federal grand jury reportedly investigating the leaking of the 47-volume, top secret report on conduct of the Vietnam War, from the first U.S. involvement up through President Johnson's administration.

Gravel had received a copy of the Pentagon report from an undisclosed source after it was originally published by the New York Times in June. He attempted to enter it in the Congressional Record by reading it on the floor of the Senate June 29. This attempt having been thwarted by Senate adjournment, Gravel convened a meeting of his Senate Subcommittee on Public Buildings and Grounds at about midnight and commenced to read portions of the report to assembled newsmen through the night. Gravel has since contracted with Beacon Press for publication of the committee record.

ACCORDING TO the Alaska's senator office, Rodberg, a physicist and formerly chief of policy research in the Science and Technology Bureau of the U. S. Arms Control and Disarmament Agency from 1963-66, was hired by Gravel on June 29 to edit the committee record and has been on his personal payroll as a legislative aide since that time.

The government contends that Rodberg was not employed as a member of the senator's staff and, further, that the constitutional immunity claim does not extend to staff members. The Justice Department brief also claimed that the "privileges" of senators, congressmen and their employes have also always been "subject to judicial limitation upon their actions, where, even though garbed in the trappings of congressional propriety, they have issued subpoenas or ordered imprisonment which transgressed their constitutional powers. Thus, this court has complete powers to find that the activities in which the Senator and Dr. Rodberg were engaged were far removed from legitimate congressional business and cannot therefore claim the protection of the privilege clause."

THE BRIEF argued that the hasty convocation of the com-

mittee was "untimely and unauthorized" and further contended that even if it were found to have been an official committee session the senator's "subsequent negotiations for the contracting for the publication of the Pentagon Papers divested him of whatever privilege he may have had."

The government in its brief refused to either "affirm nor deny that this proceeding is brought to investigate the disclosure of the so-called Pentagon Papers," but assumed, for the sake of argument, that such was the case. The grand jury investigation is known to encompass violations of the criminal code regarding the disclosure of secret government documents.

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REC-24

Daniel Ellsberg, the man responsible for unearthing the recent study on the war in Vietnam, and Jerry Stoll, president of American Documentary Films, last week announced that a film tentatively titled "The Pentagon Papers and American Democracy," is in the making. Plans are under way to use a one-hour film, featuring Ellsberg, as part of the fall peace movement campaign to "Set the Date in '71."

W. J. Wainwright

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 The Washington Daily News _____
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 People's World *p. 2*

EX-102

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(Mount Clipping in Space Below)

Ellsberg actions upset security system

By Brig. Gen. (ret.) S. L. A. MARSHALL
Military Affairs Analyst

During the dog days of August, a legion of officers in the U.S. armed forces and a phalanx of unknown civilians were given the news:

If they held top secret clearances, they were advised that unless they currently are working with top secret material, the clearance is being automatically canceled by the U.S. government.

What do these tidings mean to them? At present, practically nothing. But should they ever return to some job that requires such a clearance, they will have to repeat the whole "clearing" process.

They will be fingerprinted, though their prints have not changed. Then they will spend hours filling out forms relating their travels abroad, identifying their ancestors and making note of their associations and affiliations, present and past.

They will be quizzed by security officers as to whether they ever belonged to the KKK, the Know-Nothing Party, the Wobblies, the Knights of the Mystic Sea or other organizations on the current taboo list. Then they will sit and wait while that Rube Goldberg invention, called the review process, grinds out a decision.

OVER THE YEARS this resurgence of red tape will engage the services of the FBI, the CIA and countless clerks and bureau Hawkshaws at the cost of millions of dollars to the taxpayer.

In my own case I have heard from two so-called Washington think tanks about their latest thoughts.

The message was that I was still cleared for top secret, but since I was no longer actively requiring that clearance, would I fill out the enclosed form acknowledging my discharge from the awesome responsibility? My knowledge of anything that might bring down the pillars of the temple being less than would fill a thimble punctured by a shell.

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HONOLULU ADVERTISER
HONOLULU, HAWAII

A-17

Date: 9/1/71
Edition: HOME
Author: S.L.A. MARSHALL
Editor:
Title:

DANIEL ELLSBERG

Character: 65-1081
or
Classification: HONOLULU
Submitting Office:
☐ Being Investigated

EX-102 REC-24

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Los Angeles Times drawing

Daniel Ellsberg, as he appeared on television.

from Big Bertha, I was happy to comply.

But it did take time even as it made work for the mailman and no doubt the guardians of our security awaited the reply atremble, worrying about the possibility that another jackass would bolt and bedevil the system.

AND WHAT IS THIS ridiculous convulsion all about?

Here, is simply another wholesale mischief brought about directly by the capers of Daniel Ellsberg and his odd little pal, Russo.

These jokers from the world of science may stay stead-

fastly loyal to one another, but they seem not to give a hoot about how much trouble they give others.

To begin, the J was a minor temblor at Rand Corporation in Washington where the two had worked after a fashion and the security of which they proceeded to scuttle. A new set of security hard-hats was rushed to the scene to lock the stable after the horse was gone.

Then out of California, rumbling was heard all the way to the banks of the Potomac. The security beagles dashed to the seeming breaches in the tumbling walls, thereby to save America from total catastrophe.

Here we have what might be called the capricious compounding of a felony. It is an utterly senseless way to manage a bureaucracy, this penalizing of thousands of persons and millions of taxpayers, because of the actions of two or more misfits who allegedly betrayed their trust. But that is government for you. What we have is but another horrible example of the ill-conditioned reflex that provided Ellsberg with his lame excuse.

YEARS AGO I KNEW Ellsberg when he was quiet, soft-spoken and had no hint of that glint in his eye. He was working in the Pentagon studying the nature of international crises and had his own theory to expound. The gist was that what is called an international crisis comes about when two sets of men in power feel their personal positions challenged and likely to become forfeited unless they act boldly or at least stand firm. Out of selfishness, they move ever closer to the collision course. None but a simpleton would reject this idea outright.

That I play with it now is not because I am interested in what makes Ellsberg tick. What made the security managers behave like waterbugs is the question. It is here suggested that they were more concerned about their jobs than with the exercise of common sense, and that is the general fault in the system.

(Los Angeles Times/Washington Post Syndicate)

Gravel to Question Boston Grand Jury

A-8

Special to The Washington Post

BOSTON, Aug. 27 — Sen. Mike Gravel (D-Alaska) said today he will attempt to determine whether a federal grand jury here is investigating his role in publicizing the top secret Pentagon papers on U.S. involvement in Vietnam.

In U.S. District Court, Judge W. Arthur Garrity postponed until Sept. 10 a subpoena that would have required the appearance of a Gravel aide before the grand jury this morning.

The aide, Leonard Rodberg, was hired temporarily to assist Gravel in the editing of the Pentagon papers the senator read into the record of the Senate Subcommittee on Public Buildings and Grounds on June 29. Gravel has said he has possession of a virtually complete set of the papers, which were leaked to the press by Daniel Ellsberg.

The grand jury has been meeting in Boston for several weeks. The Justice Department has refused any comment on the subject matter being discussed by the jury.

The subpoena received by Rodberg gave no details on why he was being called.

Attorney Charles Fishman represented Gravel in court today to support Rodberg's plea for a postponement. Fishman presented Garrity a letter from the senator asking that he be allowed to intervene in Rodberg's case.

Ted Johnson, a spokesman for Gravel, said in Washington that if allowed to intervene the senator will ask directly whether the jury is investigating him.

Gravel, in a statement issued by his Washington of-

fice, said he will "assert my constitutional right as a U.S. senator to be free of any judicial inquiry into my duties as a senator."

The senator, who was in Fairbanks, Alaska, said he was making the petition to the federal court "because of the possibility that the grand jury may be inquiring into my activities or the actions of my employees in connection with my placing the Pentagon papers into the official record of the Senate Subcommittee on Public Buildings and Grounds."

"If the grand jury investigation has nothing to do with me or my employees," he continued, "the government should say so rather than hiding its purpose and forcing me to take legal action to obtain such information."

"I hope this is not an attempt to muzzle Congress."

Garrity said Gravel's attorney can file briefs next week on his petition to intervene.

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GRAVEL 9-10 NX

BOSTON (UPI)--SEN. MIKE GRAVEL, D-ALASKA, SAID FRIDAY THE FEDERAL GOVERNMENT WAS ATTEMPTING TO REACH HIM BY PROSECUTING ONE OF HIS AIDES FOR THE RELEASE OF THE PENTAGON PAPERS.

GRAVEL SPOKE TO REPORTERS AFTER A HEARING BEFORE U.S. DISTRICT JUDGE ARTHUR W. GARRITY, JR. ON A MOVE TO QUASH A GRAND JURY SUBPOENA TO TESTIFY DIRECTED AT DR. LEONARD RODBERG, AN AIDE TO GRAVEL. THE FEDERAL GRAND JURY REPORTEDLY HAS BEEN INVESTIGATING THE LEAKING OF THE PENTAGON REPORT ON THE VIETNAM WAR TO THE PRESS.

AFTER PORTIONS OF THE DOCUMENTS HAD BEEN PUBLISHED BY SEVERAL NEWSPAPERS AND AFTER THE JUSTICE DEPARTMENT HAD OBTAINED TEMPORARY RESTRAINING ORDERS AGAINST FURTHER PUBLICATION, GRAVEL STARTLED THE SENATE BY CONVENING HIS SUBCOMMITTEE ON THE CAPITOL AND READING FROM THE REPORT.

JUDGE GARRITY TOOK THE MOTION BY DR. RODBERG UNDER ADVISEMENT FRIDAY.

GRAVEL TOLD REPORTERS, "I WAS TAKEN ABACK BY THE AGGRESSIVENESS THAT THE GOVERNMENT, IN ITS CASE, SEEMS TO POINT TOWARDS ME." GRAVEL SAID HE FELT THE GOVERNMENT "WAS GOING THROUGH THE BACK DOOR TO TRY AND ATTACK AN EMPLOYE OF MINE AND TAKE HIM INTO COURT FORCIBLY AND FORCE HIM TO GIVE TESTIMONY EITHER AGAINST HIMSELF OR AGAINST MYSELF. IF THE FEDERAL GOVERNMENT IS AFTER ME, THEN THEY SHOULD SAY SO AND ACT ACCORDINGLY. MOREIR BRIEF SEEMS TO INDICIEE INTERESTED

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WASHINGTON CAPITAL NEWS SERVICE

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GRAVEL TOLD REPORTERS, "I WAS TAKEN ABACK BY THE AGRESSIVENESS THAT THE GOVERNMENT, IN ITS CASE, SEEMS TO POINT TOWARDS ME." GRAVEL SAID HE FELT THE GOVERNMENT "WAS GOING THROUGH THE BACK DOOR TO TRY AND ATTACK AN EMPLOYE OF MINE AND TAKE HIM INTO COURT FORCIBLY AND FORCE HIM TO GIVE TESTIMONY EITHER AGAINST HIMSELF OR AGAINST MYSELF. IF THE FEDERAL GOVERNMENT IS AFTER ME, THEN THEY SHOULD SAY SO AND ACT ACCORDINGLY. THEIR BRIEF SEEMS TO INDICATE THAT THEY'RE MORE INTERESTED IN ME THAN MR. RODEBERG."

BEFORE GARRITY TOOK THE CASE UNDER ADVISEMENT, RODEBERG'S LAWYERS ARGUED HE WAS GRANTED CONGRESSIONAL IMMUNITY BY REASON OF HIS ASSOCIATION WITH THE SENATOR.

THE GOVERNMENT CLAIMED, "SENATORS ARE NOT IMMUNE FROM CRIMINAL PROSECUTION" AND WHATEVER IMMUNITY MIGHT BE APPLICABLE TO SENATORS WOULD NOT NECESSARILY BE RELEVANT TO THEIR AGENTS, SERVANTS, EMPLOYEES OR PERSONAL STAFF.

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UPI-200

(GLOBE)

BOSTON --A CIVIL SUIT AGAINST THE BOSTON GLOBE BY THE JUSTICE DEPARTMENT INVOLVING PUBLICATION OF THE PENTAGON PAPERS WAS DISMISSED TODAY IN U.S. DISTRICT COURT.

CHIEF JUDGE ANTHONY JULIAN SAID A MOTION TO DISMISS THE SUIT WAS GRANTED BECAUSE THE GOVERNMENT HAD NOT FILED ANY OPPOSITION TO THE NEWSPAPER'S PETITION AND THAT THE TIME FOR ANSWERING THE PETITION HAD ELAPSED.

THE SUIT WAS FILED AGAINST THE BOSTON GLOBE NEWSPAPER CO., ITS PUBLISHER, W. DAVIS TAYLOR, THE EDITOR AND SEVERAL REPORTERS AFTER THE GLOBE PUBLISHED A SECTION OF THE SECRET 47-VOLUME HISTORY OF U.S. DECISION-MAKING IN VIETNAM.

ATTORNEYS FOR THE NEWSPAPER ASKED THE SUIT BE DISMISSED ON GROUNDS "THE ISSUES INVOLVED HAVE BEEN PREVIOUSLY ADJUDICATED AND THIS PROCEEDING IS MOOT." THE MOTION WAS FILED THE DAY AFTER THE U.S. SUPREME COURT UPHELD NEWSPAPERS RIGHT TO PUBLISH THE SECRET MATERIAL IN SEPARATE CASES INVOLVING THE NEW YORK TIMES AND WASHINGTON POST.

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RUSSO 9-16 NX
 LOS ANGELES (UPI)---ANTHONY J. RUSSO JR., A COLLEAGUE OF DR. DANIEL ELLSBERG, WILL REMAIN JAILED UNTIL HE AGREES TO ANSWER A GRAND JURY'S QUESTIONS ABOUT THE LEAK OF THE PENTAGON PAPERS, A FEDERAL JUDGE RULED WEDNESDAY.

RUSSO, 34, WAS JAILED FOR CONTEMPT AUG. 16 WHEN HE REFUSED TO ANSWER 12 OF THE FEDERAL JURY'S QUESTIONS REGARDING THE RELEASE AND PUBLICATION OF THE DOCUMENTS.

THE SAME JURY INDICTED ELLSBERG FOR UNAUTHORIZED POSSESSION AND THEFT OF THE DOCUMENTS. RUSSO AND ELLSBERG BOTH WORKED AT THE RAND CORP. FROM WHERE THE PAPERS DEALING WITH AMERICAN INVOLVEMENT IN VIETNAM ALLEGEDLY WERE TAKEN.

MICHAEL BALABAN, RUSSO'S ATTORNEY, ASKED U.S. DISTRICT COURT JUDGE WILLIAM P. GRAY TO RELEASE HIS CLIENT SINCE ELLSBERG HAD ALREADY BEEN INDICTED AND THERE WAS NO LONGER ANY NEED TO ANSWER THE QUESTIONS.

GRAY SAID HE CONSIDERED THE QUESTIONS "RELEVANT" TO THE CONTINUING PROBE INTO INVOLVEMENT OF OTHERS IN THE CASE AND SAID RUSSO WOULD NOT BE RELEASED UNTIL HE AGREED TO TESTIFY.

BALABAN SAID HE WOULD APPEAL GRAY'S DECISION.

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UPI-179

(PENTAGON PAPERS)

WASHINGTON--THE DIRECTOR OF THE FREEDOM OF INFORMATION CENTER OF THE UNIVERSITY OF MISSOURI'S SCHOOL OF JOURNALISM FILED SUIT TODAY IN U.S. DISTRICT COURT DEMANDING THAT THE DEFENSE DEPARTMENT RELEASE TO HIM THE PENTAGON PAPERS.

PAUL FISHER ARGUED IN HIS SUIT AGAINST DEFENSE SECRETARY MELVIN R. LAIRD THAT HE IS ENTITLED, UNDER THE FREEDOM OF INFORMATION ACT, TO THE 47 VOLUMES OF "HISTORY OF U.S. DECISION-MAKING PROCESS ON VIETNAM POLICY."

DANIEL ELLSBERG, A FORMER PENTAGON EMPLOYEE, HAS BEEN CHARGED WITH ILLEGAL POSSESSION OF THE DOCUMENTS. ELLSBERG ACKNOWLEDGED HE GAVE THE PAPERS TO THE NEW YORK TIMES AND OTHER PAPERS.

THE FISHER SUIT ASKED FOR AN INJUNCTION TO ENJOIN LAIRD FROM WITHHOLDING THE DOCUMENTS AND TO ORDER HIM TO MAKE THEM AVAILABLE TO FISHER.

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TOP CLIPPING
 DATED 9-26-71
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WASHINGTON CAPITAL NEWS SERVICE

59 SEP 23 1971

Believed in warehouse

Ellsberg secrets cache?

LOS ANGELES (UPI) — Daniel Ellsberg, who admitted leaking the Pentagon Papers, has a large hoard of personal and government documents stored in a warehouse, a federal court heard yesterday.

The government is trying to subpoena the records of the former Rand Corp. think tank expert who is accused of unauthorized possession and use of secret documents.

A government affidavit said Mr. Ellsberg began storing personal papers and government documents as long as 18 months ago. His attorneys said the subpoena was "a blanket fishing expedition."

U.S. District court judge William Byrne Jr. said he would rule Monday.

David Nissen, a Justice Department attorney, said the stored papers would be used by the grand jury that originally indicted Mr. Ellsberg to look for "other offenses that might have been committed and for other persons who might have committed them."

Some of the papers belonged to the United States, Mr. Nissen said, "many" were classified and Mr. Ellsberg had no right to retain them. The documents were in "several metal handcases, a footlocker, 18 book volumes, a large cardboard carton and a large carton file," Mr. Nissen added.

Defense attorney Charles Nesson of Boston said the subpoena violated Mr. Ellsberg's constitutional rights and abused the grand jury process by making it a "discovery tool."

Mr. Ellsberg was not in court. His trial in the Pentagon Papers case is not scheduled until next year.

Mr. Nissen said the FBI asked the Bekins Co. last month for access to Mr. Ellsberg's records. Bekins refused but agreed to notify the FBI if Mr. Ellsberg tried to retrieve his files.

Two weeks ago Mr. Ellsberg told Bekins he wanted his things, the company notified the FBI and the subpoena was issued, Mr. Nissen said.

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U.S. Judge to Study More By Ellsberg on Subpoena

LOS ANGELES, Sept. 14 (UPI)

A Federal judge took under advisement today a motion to quash a subpoena for additional records stored by Dr. Daniel Ellsberg, who has said that he gave the Pentagon papers to the press.

The United States District Judge, William M. Byrne Jr., said he would make a ruling next Monday.

A grand jury that previously indicted Dr. Ellsberg for unauthorized possession and use of secret documents, obtained the subpoena for other papers, which are in a warehouse.

The defense attorney, Charles Nesson of Boston, said that the subpoena violates Dr. Ellsberg's constitutional rights against self-incrimination and unreasonable search and seizure. He argued that the subpoena also "abuses" the grand jury process in that the subpoena was being used as a "discovery tool" against Dr. Ellsberg.

Judge Byrne said he wanted to study grand jury testimony to decide whether the investigation was aimed at getting information concerning the charges already made.

Dr. Ellsberg was not in court. The trial of the former Rand Corporation employe is not scheduled to start until after January.

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Date 9-15-71

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Believed in warehouse

Ellsberg secrets cache?

LOS ANGELES (UPI) — Daniel Ellsberg, who admitted leaking the Pentagon Papers, has a large hoard of personal and government documents stored in a warehouse, a federal court heard yesterday.

The government is trying to subpoena the records of the former Rand Corp. think tank expert who is accused of unauthorized possession and use of secret documents.

A government affidavit said Mr. Ellsberg began storing personal papers and government documents as long as 18 months ago. His attorneys said the subpoena was "a blanket fishing expedition."

U.S. District court judge William Byrne Jr. said he would rule Monday.

David Nissen, a Justice Department attorney, said the stored papers would be used by

the grand jury that originally indicted Mr. Ellsberg to look for "other offenses that might have been committed and for other persons who might have committed them."

Some of the papers belonged to the United States, Mr. Nissen said, "many" were classified and Mr. Ellsberg had no right to retain them. The documents were in "several metal handcases, a footlocker, 18 book volumes, a large cardboard carton and a large carton file," Mr. Nissen added.

Defense attorney Charles Nesson of Boston said the subpoena violated Mr. Ellsberg's constitutional rights and abused the grand jury process by making it a "discovery tool."

Mr. Ellsberg was not in court. His trial in the Pentagon Papers case is not scheduled until next year.

Mr. Nissen said the FBI asked the Bekins Co. last month for access to Mr. Ellsberg's records. Bekins refused but agreed to notify the FBI if Mr. Ellsberg tried to retrieve his files.

Two weeks ago Mr. Ellsberg told Bekins he wanted his things, the company notified the FBI and the subpoena was issued, Mr. Nissen said.

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U.S. Claims Ellsberg Has Data Stored

Los Angeles Times

LOS ANGELES — Daniel Ellsberg began storing a massive hoard of government papers in a warehouse here more than a year ago, according to an affidavit filed in U.S. District court.

The affidavit was filed in support of an argument by Department of Justice attorney David R. Nissen that a federal grand jury has a right to subpoena the papers from Bekins Van and Storage Co.

Ellsberg's attorney claimed that the subpoena amounted to "a blanket fishing expedition" by the government and that it violated their client's rights under the fourth amendment.

Nissen, however, told U.S. District Judge Matt Byrne that the present course of the grand jury investigation, while still dealing with the Pentagon papers, is not concentrating on Ellsberg since he has already been indicted.

Nissen contended that the papers in storage "belong to the United States," that many have a security classification and that Ellsberg has no right to retain them.

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TIMES IS CRITICIZED ON PENTAGON PAPERS

Leslie H. Gelb, coordinator of the Pentagon team that put together the secret study of the war in Vietnam, wrote in this week's Life magazine that he had "two serious criticisms" of The New York Times articles dealing with the study but that the articles "were largely a fair representation."

ing that the bombing of the North was having the opposite of the desired effects, as the Times revealed," he wrote, "it was not nearly as pessimistic about the war in the South."

The Pentagon papers, Mr. Gelb wrote, "have lessons to teach us about Vietnam and, more importantly, about how foreign policy is made in our nation—lessons which, I believe, are still unlearned."

Mr. Gelb, writing in the issue dated Sept. 17, said that The Times "should have stated explicitly that President Johnson before the 1964 elections was not part of the general consensus in our Government to bomb North Vietnam." He said, "Our studies . . . depict him as quite resistant to this course."

The Times's articles, Mr. Gelb wrote, "give a misleading view of C.I.A. findings."

"While the C.I.A. was argu-

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Justice Claims Subpoena Right On Any Senator

By Sanford Ungar
Washington Post Staff Writer

BOSTON, Mass., Sept. 10—The Justice Department claimed in federal court today that it is entitled to subpoena any member of Congress or any congressional staff aide before a grand jury investigating the disclosure earlier this year of a secret Pentagon study on the war in Vietnam.

"Senators are not immune from the criminal process," said Justice Department Attorney Paul C. Vincent, arguing that an aide to Sen. Mike Gravel (D-Alaska) should be forced to answer a subpoena served on him last month.

Lawyers for Gravel argued in U.S. District Court for Massachusetts that Gravel's assistant, Leonard S. Rodberg, is protected by the same constitutional immunity as any member of Congress.

Federal Judge W. Arthur Garrity took the case under advisement over the weekend.

The Alaska senator, who read excerpts from the Pentagon papers into the public report during a midnight session of his public works subcommittee last June 29, invited the administration to test the issue more directly by calling him to testify instead of Rodberg.

Charging that the Justice Department was using "the back door" to get at his own confidential business, Gravel told a news conference: "if the federal government is after me, they should say so."

After the more than five hours of heated courtroom debate, Gravel said, "I was taken aback by the aggressiveness with which the government seems to pursue me."

Vincent, however, replied only "no comment" when asked whether the Justice Department is contemplating the issuance of a subpoena against the senator himself.

Rodberg, a former professor of physics and astronomy at the University of Maryland, said he was determined not to testify before the grand jury about the Pentagon papers.

"At the present time," Rodberg told newsmen, "I am bound by my duty as a member of Sen. Gravel's personal staff not to testify."

Judge Garrity's ruling on whether to quash the subpoena against Rodberg could be the first step in a major constitutional confrontation over the meaning and the extent of the "speech and debate clause" in Article 1, Section 6 of the Constitution.

Also under advisement is the case of Richard Falk, a professor of international law at Princeton University, who was served with a similar subpoena to appear before the grand jury here.

Attorneys for Falk argued before Garrity today that the professor's appearance before the grand jury could compromise his own confidential sources of information and his ability to serve as a "scholarly commentator" on public affairs.

Already ordered to testify before the grand jury was Sam Popkin, an assistant professor of government at Harvard University.

Popkin, on Garrity's order, went before the grand jury recently, but was excused from any further appearance after only five minutes of questioning. Legal sources here said that the Harvard professor had been asked "simple questions, like 'what newspapers do you read?'"

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SEP 11 1971

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Vincent continued today to refuse to state the exact nature of the grand jury inquiry.

But an "oath of office," filed with the clerk of U.S. District Court on July 7 but made public for the first time today, confirms that he is here for the investigation of violation of the federal Espionage Act and of other statutes which the government has cited since it first moved against newspapers which published the Pentagon study and against Daniel Ellsberg, who has acknowledged making the Pentagon papers available to the press.

The alleged violations specified in Vincent's oath include "retention of public or records with intent to convert," the gathering and transmitting of national defense information, "the concealment or removal of public records or documents" and "conspiracy to commit such offenses and to defraud the United States."

Central to the government's argument that Rodberg must answer the subpoena was Vincent's contention in court that Gravel's subcommittee meeting was "unauthorized" and unofficial.

"Immunity attaches to a senator only when he is engaged in lawful duties," Vincent said, suggesting that the emergency meeting was not "lawful."

Lawyers for Gravel and Rodberg insisted that the senator's action had not been "eschewed and disclaimed" by the Senate or by Sen. Jennings Randolph, (D-W.Va.), chairman of the Parent Public Works Committee.

Garrity said he was reluctant to determine whether the meeting of Gravel's Subcommittee on Public Buildings and Grounds was legal. He said he doubted the court had the power to rule in the matter.

It became known in Los Angeles, meanwhile, that the federal grand jury which indicted Ellsberg last June had been extended another six months.

The jury's term was due to expire Monday, Sept. 13, but Assistant U.S. Attorney David Nissen said in court that the panel was continuing a broad inquiry into circumstances surrounding the leak of the Pentagon papers.

Nissen denied that the grand jury was gathering evidence on charges already leveled against Ellsberg. He said it was considering other possible charges against Ellsberg and other individuals, including the possibility of perjury.

Herbert O. Reid, a professor at the law schools of Howard and Rutgers Universities, argued in rebuttal to the Justice Department that the Pentagon papers were, in any event, "germane" to the business of Gravel's subcommittee, because "a lot of committees have questioned the reordering of domestic priorities and the war is relevant to that."

Attorneys from the Center for Constitutional Rights in New York, representing Rodberg, pointed out that in previous cases involving actions by congressional staff members, the Justice Department had taken exactly the same position as Gravel and Rodberg did today—that the immunity of the speech and debate clause extends to aides in their functions on behalf of senators or representatives.

They cited a case involving J. G. Sourwine, staff counsel of the Senate Subcommittee on Internal Security, and another involving the right of the House Internal Security Committee to publish a list of "radical speakers" on college campuses.

As in the case involving the right of The Washington Post and New York Times to publish articles based on the Pentagon papers, decided in the newspapers' favor by the Supreme Court on June 30, the grand jury dispute includes a claim that the First Amendment right of free speech are threatened by the subpoenas.

Falk, for example, asserted that his "scholarly function" is entitled to the same protection as the right of the newspapers to publish.

Garrity, who was appointed to the federal bench by President Johnson in 1966, is expected to rule in the case next week. Although a decision on a motion to quash a subpoena cannot ordinarily be appealed, Gravel said he would take the case to the First U.S. Circuit Court of Appeals here if he loses, since Rodberg would not be able to protect the senator's assertion of immunity if he appears before the grand jury.

Gravel Accuses Administration Of Trying to Silence War Foes

9

By BILL KOVACH

Special to The New York Times

BOSTON, Sept. 10—Senator Mike Gravel, Democrat of Alaska, accused the Nixon Administration today of trying to intimidate Congressional critics through the use of a Federal grand jury investigation here.

Mr. Gravel made the charge after having listened to arguments in Federal District Court in his attempt to quash a subpoena issued to one of his staff members by a grand jury looking into the circulation and publication of the secret Pentagon study of the Vietnam war.

His petition, and that of another witness subpoenaed before the same grand jury, were taken under advisement by Judge W. Arthur Garrity, who is not expected to rule until sometime next week.

Although the grand jury's investigation is secret and the Government refuses to disclose what information it is seeking from the witnesses, Mr. Gravel said it was clear that an attempt was being made to investigate him.

The Senator, at a June 29 subcommittee meeting, read into the Congressional Record parts of the Pentagon papers at the time that the Justice Department was moving to block further publication of the papers in The New York Times and in other newspapers.

Congressional Immunity Argued

"Only after I sat in the courtroom today and saw how aggressively the Government seemed in its attempts to point the case toward me did I become convinced they are after a member of my staff only to get to me," Senator Gravel said.

Asked by newsmen whether he saw an effort by the Administration to intimidate critics in Congress, Mr. Gravel said: "I can only come to that conclusion. I was not of that opinion until I saw the aggressive way the Government pointed its case toward me today."

Attorneys for Senator Gravel were attempting to block the subpoena of Dr. Leonard S. Rodberg, an expert on foreign

affairs hired by Mr. Gravel to prepare his statement on the Pentagon papers, which were read before the Senate subcommittee on Buildings and Grounds.

The attorneys argued that the Senator had directed Dr. Rodberg's efforts and that Dr. Rodberg was protected by the immunity from prosecution granted to members of Congress by the Constitution. The attorneys contended that any interrogation of Senator's staff members by the grand jury was unconstitutional.

The Government, represented by a Justice Department lawyer, Paul Vincent, denied that the Constitution protected the staff member and argued that Mr. Gravel had conducted himself in such a way as to lose immunity.

Judge Garrity heard arguments earlier from lawyers for Prof. Richard Falk of Princeton University, who had also been subpoenaed.

One of them, Jack Levine, argued that the subpoena issued to Professor Falk, a recognized expert in foreign affairs and author of works opposing the war in Vietnam, violated his First Amendment rights as a scholar and journalist.

Any attempt to force Professor Falk to appear, Mr. Levine said, would close off his confidential sources of information and deprive the public of his knowledge, interpretations and discussions of matters of public importance. The Government argued that Professor Falk had no such standing and should be required to testify.

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(Mount Clipping (Space Below))

Gravel says US government is pursuing him

By Bruce McCabe
Globe Staff

Sen. Mike Gravel (D-Alaska) charged in Boston yesterday that the Federal government is "pursuing" him through a grand jury investigation into circumstances surrounding the disclosure of the Pentagon papers on the Vietnam War.

"I am taken aback by the aggressiveness of the government's case toward me...I am obviously bigger fish to fry," Gravel said.

The senator made his remarks at a press conference after a hearing at the Federal Building.

"The government is coming in through the back door by trying to get an employee of mine to testify," said Gravel. "If they are after me, they should say so."

Mr. Tolson
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Mr. Sullivan
Mr. Mohr
Mr. Bishop
Mr. Miller
Mr. Callahan
Mr. Casper
Mr. Conrad
Mr. Dalbey
Mr. Cleveland
Mr. Ponder
Mr. Rosen
Mr. Tavel
Mr. Walters
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

(Indicate page, name of newspaper, city and state.)

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THE BOSTON GLOBE
BOSTON, MASS.

THE BOSTON HERALD
TRAVELER
BOSTON, MASS.

THE BOSTON RECORD
AMERICAN
BOSTON, MASS.

Date: 9/11/71
Edition: Saturday
Author: Bruce Mc Cabe
Editor: Thomas Winship
Title: MC LEK
NATIONALITIES
Character: INTELLIGENCE
or Espionage
Classification: 65-5236
Submitting Office: Boston
☐ Being Investigated

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At the hearing, attorneys for both Gravel and his personal aide, Leonard S. Rodberg, argued on behalf of a motion to quash a subpoena requiring Rodberg's appearance before a grand jury which is currently testimony on the Pentagon papers.

Justice Department lawyer Paul C. Vincent argued that "the law is clear that senators are not immune from the criminal process" and that legislative "privilege" does not extend to personal aides of senators.

Gravel, whose attorneys filed a motion "to intervene" in the case, sat at the table of his legal counsel during the hearing before Federal Court Judge W. Arthur Garrity Jr. He said at the press conference that he will "stand in front of" Rodberg in any legal proceedings involving Rodberg's duties as his aide.

At issue is Gravel's reading into the Congressional

Record excerpts from the Pentagon study. The reading was done when Gravel convened a midnight session of the Senate subcommittee on public buildings and grounds on June 29.

Attorneys for Gravel and Rodberg argued that by requiring Rodberg's appearance before the grand jury, the government was jeopardizing Gravel's "right to be free of judicial inquiry of his official acts" as a US Senator.

Judge Garrity took the arguments under advisement saying he might have a ruling by early next week.

Appearing also before Garrity to argue on behalf of a motion to quash a subpoena requiring his appearance before the grand jury was Prof. Richard Falk, professor of politics and international relations at Princeton University and an Asian scholar.

Falk's attorney, Jack J. Levine, argued that Falk's activities as a legal scholar,

legal consultant and journalist are "protected by the First Amendment against governmental intrusion" and that Falk's rights and these activities would be compromised if he were compelled to appear before the grand jury.

It was during Vincent's argument disputing Levine's qualification of Falk as a "journalist" that Garrity indicated an interest in what appeared to be one of the most transcendent legal issues of the proceedings, the virtually unquestioned right of a grand jury to summon witnesses.

Garrity said that since New York Times reporter Earl Caldwell was ruled not to be required to appear before a federal grand jury, the whole issue of "newsman's privilege" was "emerging" as a legal issue, that "we have to recognize is just coming on the scene.

"It is not just a question of what grand jury procedure was 50 or 100 years ago," Garrity said. "There are no previous rulings on this."

At his press conference, Gravel, who did not testify during the proceedings, said he had come to Boston to appear in court with his aide because he thought the grand jury was conducting "a fishing expedition against Dr. Rodberg."

"I now realize they are after him to get at me," Gravel said.

Gravel said he chose a hearing of the Senate subcommittee on buildings and grounds as a forum for his reading of the Pentagon documents because "unfortunately, as a freshman senator it is the only position I have" and because "we wanted testimony on why we lacked funds for buildings — because we were spending them in Vietnam."

Gravel defined the issues of the proceedings as "not only the issue of war and peace, but secrecy in government and the protection of the rights of the Senate against invasion and harassment" by the executive branch.



GRAVEL AND FRIEND — Sen. Mike Gravel tells Boston news conference Federal grand jury's attempts to question aide Leonard Rodberg (background) are in reality "an attempt to get me." News conference followed court hearing yesterday. (AP)

Justice Claims Subpoena Right On Any Senator

By Sanford Ungar
Washington Post Staff Writer

BOSTON, Mass., Sept. 10—The Justice Department claimed in federal court today that it is entitled to subpoena any member of Congress or any congressional staff aide before a grand jury investigating the disclosure earlier this year of a secret Pentagon study on the war in Vietnam.

"Senators are not immune from the criminal process," said Justice Department Attorney Paul C. Vincent, arguing that an aide to Sen. Mike Gravel (D-Alaska) should be forced to answer a subpoena served on him last month.

Lawyers for Gravel argued in U.S. District Court for Massachusetts that Gravel's assistant, Leonard S. Rodberg, is protected by the same constitutional immunity as any member of Congress.

Federal Judge W. Arthur Garrity took the case under advisement over the weekend.

The Alaska senator, who read excerpts from the Pentagon papers into the public report during a midnight session of his public works subcommittee last June 29, invited the administration to test the issue more directly by calling him to testify instead of Rodberg.

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After the more than five hours of heated courtroom debate, Gravel said, "I was taken aback by the aggressiveness with which the government seems to pursue me."

Declines to Comment

Vincent, however, replied only "no comment" when asked whether the Justice Department is contemplating the issuance of a subpoena against the senator himself.

Rodberg, a former professor of physics and astronomy at the University of Maryland, said he was determined not to testify before the grand jury about the Pentagon papers.

"At the present time," Rodberg told newsmen, "I am bound by my duty as a member of Sen. Gravel's personal staff not to testify."

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Garrity said he was reluctant to determine whether the meeting of Gravel's Subcommittee on Public Buildings and Grounds was legal. He said he doubted the court had the power to rule in the matter.

It became known in Los Angeles meanwhile, that the federal grand jury which indicted Ellsberg last June had been extended another six months.

Probe Continued

The jury's term was due to expire Monday, Sept. 13, but Assistant U.S. Attorney David Nissen said in court that the panel was continuing a broad inquiry into circumstances surrounding the leak of the Pentagon papers.

Nissen denied that the grand jury was gathering evidence on charges already leveled against Ellsberg. He said it was considering other possible charges against Ellsberg and other individuals, including the possibility of perjury.

(Mount Clipping in Space Below)

Gravel Assails U. S. For 'Involving' Aide

(By DAN McLAUGHLIN) — Alaska Sen. Mike Gravel charged yesterday the Justice Dept. is using one of his aides to get to him. The Senator was referring to a subpoena ordering the aide, Dr. Leonard Rodberg, to appear before a Federal Grand Jury in Boston which is investigating distribution of the Pentagon Papers.

Gravel, who read a portion of the papers into the Senate record, spoke during a press conference in the Federal Building in Boston after a hearing before U. S. District Court Judge W. Arthur Garrity, Jr. on a motion to quash the subpoena.

"I was taken aback by the aggressiveness of the government's case," the Senator said. "It seems to point to me, I'd rather they pursue me than Mr. Rodberg."

"I stepped in front of Rodberg the moment I learned of the subpoena. If anyone is guilty, it's me. He did it under my orders," he said.

"We thought it was a fishing expedition against Rodberg. It appears they're after him to get me," the Senator said. "If the government is after something, let them come after me and leave my employees alone."

Gravel said his reading of

the papers placed them in public domain. He said he did it to show the public there was a lack of funds to build hospitals, schools and child care facilities because of the Vietnam War.

"The false shrouds of secrecy can now be taken down," he said. Gravel said the disclosures were not full, but obvious deceptions were brought out.

When asked if he thought he did anything wrong by reading them, he said, "Not in the slightest. I've exercised virtue and I'd do it again."

During the court hearing, Atty. Robert Reinstein said the relationship between a Senator and aide was similar to a lawyer and client or a husband and wife, and the aide should not be compelled to testify.

Atty. James Reiff said he felt Rodberg fell in the permissible scope of the First Amendment privilege.

Justice Department Atty. Paul Vincent told the court there is no immunity for a Congressman in criminal matters and certainly none for member of his staff.

Mr. Tolson _____
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Mr. Casper _____
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Mr. Walters _____
Mr. Soyars _____
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Miss Holmes _____
Miss Gandy _____

(Indicate page, name of newspaper, city and state.)

THE BOSTON GLOBE
BOSTON, MASS.

THE BOSTON HERALD
TRAVELER
BOSTON, MASS.

THE BOSTON RECORD
AMERICAN
BOSTON, MASS.

Date: 9/11/71
Edition: Saturday
Author: Dan Mc Laughlin
Editor: John C. McLean
Title: MC LEK

NATIONALITIES

Character: INTELLIGENCE
or Espionage

Classification: 65-5236

Submitting Office: Boston

☐ Being Investigated

65-74060-A

NOT RECORDED

170 SEP 22 1971

9 SEP 23 1971

(Mount Clipping in Space Below)

It's Persecution, Gravel Charges

By J. J. SMITH

Sen. Mike Gravel of Alaska yesterday accused the Justice Department of "aggressively" persecuting him in order to maintain "a shroud of secrecy" around the controversial Pentagon Papers.

Gravel made the allegation at a news conference following a U.S. District Court hearing in Boston. The hearing was on a motion to quash a subpoena of a Gravel aide by a federal grand jury.

The Democratic senator described the efforts to question the aide, Dr. Leonard S. Rod-

berg as "an attempt to get me."

"I was taken aback by the aggressiveness of the government in pursuing me (at the hearing)," said Gravel. "They are going through the back door to get to me through one of my aides. I'm a bigger fish to fry."

Judge W. Arthur Garrity Jr. took under advisement the motion to prevent the grand jury from questioning Rodberg, author of many anti-war articles.

DURING THE day-long hearing, attorneys for Rodberg argued he should not be required to testify before the grand jury because they said constitutional immunity of congressmen extends to their aides. The grand jury is believed to be investigating the distribution of the controversial Pentagon Papers to the press.

Congressmen are immune from legal action while performing legislative business. Rodberg, also associated with the anti-war Institute for Political Studies in Washington, joined the Alaskan senator's staff on June 29, the day Gravel read sections from the Pentagon Papers in a midnight meeting of his subcommittee.

GRAVEL TOLD the news conference, "He (Rodberg) was an employee of mine and anything he did he did at my orders. If the government is after somebody, let them come after me and leave my employees alone."

"I stand between him and anyone who wants to invade him for doing anything that he did at my requests," said Gravel.

Paul Vincent, representing the Justice Department, told Judge Garrity that immunity does not extend to aides, and that the subcommittee session at which Gravel read from the study of the origins of the Vietnam war did not represent legitimate legislative business.

Later, Gravel said: "The Pentagon Papers were relevant to our subcommittee (on Buildings and Grounds). We want to know why there isn't enough money to build the public buildings we need. The reason is because we are spending so much money on the war."

JUDGE GARRITY also took under advisement until Monday a motion by Princeton University Prof. Richard Falk to keep from giving testimony before the grand jury.

Falk's counsel, Atty. Jack J. Levine of New York City, argued that the value of Falk's work in the fields of international law and relations would be lost if he were forced to testify and thus lose his private information sources.

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Miss Gandy _____

(Indicate page, name of newspaper, city and state.)

THE BOSTON GLOBE
BOSTON, MASS.

6 THE BOSTON HERALD
TRAVELER
BOSTON, MASS.

THE BOSTON RECORD
AMERICAN
BOSTON, MASS.

Date: 9/11/71
Edition: Saturday
Author: J.J. Smith
Editor: John Herbert
Title: MC LEK

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Character: INTELLIGENCE
or Espionage
Classification: 65-5236
Submitting Office: Boston

☐ Being Investigated

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170 SEP 22 1971

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(Herald Traveler Staff Photo by Paul A. Doherty)

SEN. MIKE GRAVEL, left and his aide, **Dr. Leonard S. Rodberg**, at press conference.

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UPI-40

(ELLSBERG)

LOS ANGELES --ATTORNEYS FOR DANIEL ELLSBERG, ACCUSED OF UNAUTHORIZED POSSESSION AND THEFT OF THE PENTAGON PAPERS, ATTEMPTED TUESDAY TO QUASH A SUBPOENA FOR RECORDS HE REPORTEDLY HAS IN STORAGE. THE SUBPOENA, ISSUED BY SECRET FEDERAL GRAND JURY, CAME TO LIGHT IN PROCEEDINGS BEFORE U.S. DISTRICT COURT JUDGE MATT BYRNE.

A SPOKESMAN FOR THE U.S. ATTORNEY'S OFFICE IN LOS ANGELES SAID THE SUBPOENA WAS SERVED BY BEKINS VAN & STORAGE CO. FOR RECORDS UNDER THE NAME OF DANIEL ELLSBERG.

THE SUBPOENA, ACCORDING TO THE SPOKESMAN INVOLVES A GRAND JURY INVESTIGATION DISTINCT FROM THAT WHICH RESULTED IN ELLSBERG'S INDICTMENT.

THE MOTION TO STOP THE SUBPOENA WAS FILED BY ATTORNEY ARTHUR BERMAN. HE SAID IT SHOULD BE QUASHED BECAUSE THE GRAND JURY INVESTIGATION MUST BE RELATED TO THE PRESENT CHARGES AGAINST ELLSBERG.

A BEKINS OFFICIAL APPEARED BEFORE THE JURY FOR ABOUT 15 MINUTES TUESDAY, BERMAN SAID.

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WASHINGTON CAPITAL NEWS SERVICE

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Ellsberg attorneys fight subpoena of records

LOS ANGELES — Attorneys for Daniel Ellsberg, accused of unauthorized possession and theft of the Pentagon Papers, attempted Tuesday to quash a subpoena for records he reportedly has in storage.

The subpoena, issued by a secret federal grand jury, was served on Bekins Van and Storage Co. for records under the name of Daniel Ellsberg.

The subpoena, according to a spokesman for the U.S. attorney's office, involves a grand jury investigation distinct from that which resulted in Ellsberg's indictment. Ellsberg's attorney, Arthur Berman, however, moved to quash the subpoena on the grounds that the grand jury investigation must be related to the charges against Ellsberg.

C. P. Brennan
H. K. H.

The Washington Post _____
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The Washington Daily News _____
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The Sunday Star (Washington) _____
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Sunday News (New York) _____
New York Post _____
The New York Times _____
The Daily World *p. 4* _____
The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

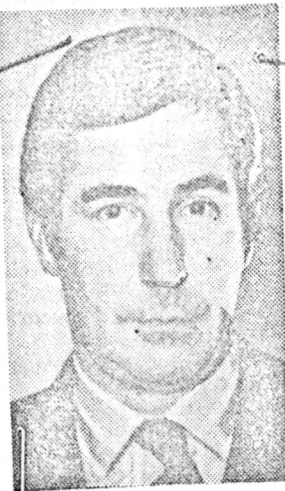
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Date _____

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65-74060-Sub A

59 SEP 21 1971



SEN. MIKE GRAVEL
... immunity in question

Grand Jury May Quiz Sen. Gravel

By Sanford J. Ungar
Washington Post Staff Writer

The Justice Department has warned that it may subpoena Sen. Mike Gravel (D-Alaska) to testify before a federal grand jury in Boston investigating the publication in June of secret Pentagon papers on Vietnam.

Gravel's midnight session of a Senate public works subcommittee June 29, when he read portions of the Pentagon study into the public record, was "unauthorized and untimely," the government charged in a legal memorandum filed in U.S. District Court for Massachusetts Tuesday.

As a result, the memorandum said, Gravel could not in-

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People's World _____

Date 9/9/71

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102 SEP 10 1971

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See 5
65-74060-Sub A

Federal Grand Jury May Question Gravel

GRAVEL, From A1

Rodberg has been subpoenaed to appear before the grand jury, but has asked U.S. District Judge Arthur Garrity in Boston to quash the subpoena.

His request was made on the grounds that it interferes with his First Amendment rights.

Gravel intervened in that case last week, claiming along with Rodberg that the subcommittee session was part of legislative business and that his staff member's official actions are therefore as immune from judicial inquiry as his own.

Judge Garrity will hold a hearing in Boston at 10 a.m. Friday on Gravel's and Rodberg's motions to quash the subpoena.

Discussing the Boston proceedings publicly for the first time, the Justice Department also said in its Boston memorandum that "the government is engaged in a crucial step of enforcing the criminal law."

The memorandum stresses that "the government neither affirms nor denies that this proceeding is brought to investigate the disclosure of the so-called 'Pentagon Papers.'"

But it adds that the investigation "has been initiated as a vital and unavoidable step in the investigation of possible violations of criminal statutes."

The Justice Department goes on to point out that the Supreme Court, in affirming the right of The Washington Post and The New York Times to print articles based on the secret Pentagon study on June 30, did not rule on the question of criminal prosecution concerning disclosure of the study.

The department cites Justice Byron R. White's concurring opinion that "failure by the government to justify prior restraints does not measure its constitutional entitle-

ment to investigate disclosure of the Pentagon papers in mid-July.

After newspapers learned of the investigation, the Justice Department switched it to a new grand jury and, among other items, subpoenaed Ellsberg's bank records.

An FBI inquiry into the matter also extended to photocopying shops in the university community of Cambridge, Mass., as well as to colleagues of Ellsberg.

A spokesman for Gravel, discussing the Boston grand jury, said yesterday that the senator met Rodberg "for the first time in his life" on the night of the surprise subcommittee meeting, and promptly hired him to edit the official recording of the hearing.

Rodberg, a former University of Maryland physicist, who is now a fellow at the Institute for Policy Studies here, later negotiated publication of Gravel's copy of the Pentagon papers by the Beacon Press in Boston.

Beacon officials, who claim the Gravel publication will contain 95 per cent of the original Pentagon study, have said that it will appear in four volumes next month.

Gravel wrote to every member of the Senate Tuesday, seeking their support in an issue he claimed involves "the independence of the Senate and our entire system of constitutional government."

"If the executive branch may with the cooperation of federal courts order our staff assistants to testify before federal grand juries about our sources of information," Gravel said in the letter, "we would obviously be open to harassment and subject to new constraints should we venture into any area of major controversy."

The Alaska senator has declined to say how he obtained his copy of the Pentagon papers.

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The Daily World _____
The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

Date _____

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Secrecy In The White House

Since the *New York Times* and *Washington Post* published the stolen Pentagon documents, the White House has become more secretive.

Nobody scooped President Nixon's announcement that he would accept an invitation to Peking, reversing the United States' former China policy.

There were no advance news leaks that the President would freeze prices and wages, stop the outflow of gold, seek Congressional removal of the excise tax, and place a 10 per cent penalty on imports.

Next in the series of secretive events, the President asserted executive privilege by withholding information from Congress.

Nixon's hand was forced when the Senate Foreign Relations Committee voted in July to suspend all foreign military aid unless the Defense Department submitted its five-year plan for the program.

The committee acted under authority of the Foreign Assistance Act of 1961. That law provides that any congressional panel dealing with foreign aid can demand from the executive branch any pertinent document.

The act further specifies that funds for the portion of the program at issue will be stopped automatically unless the executive agency provides the requested materials within 35 days. The provision to cut off funds, however, would not take effect if the President certified that

he had forbidden the agency to comply with the request and gave his reasons for doing so.

Nixon entered a claim of executive privilege hours before the 35-day cutoff deadline. His explanation was that giving the committee the material it sought "would not be in the public interest."

His action was not without precedent. At least 17 Presidents have exercised executive privilege.

Dwight D. Eisenhower denied to the late Sen. Joseph R. McCarthy the information on a private meeting of Attorney General Herbert Brownell Jr. and Army Counsel John Adams to be used in the Army-McCarthy hearings of 1954.

Harry S. Truman issued a directive in 1948 barring disclosure of any loyalty files to Congress.

Grover Cleveland, Democrat, declared in 1886 that "the public interest would not be promoted" by furnishing the Senate Judiciary Committee with information on dismissal of Republican officeholders.

The list of cases of assertion of the President's executive privilege goes all the way back to George Washington. He refused a House of Representatives request for correspondence relating to the Jay Treaty with Britain in 1796.

The President's right to withhold information from Congress is firmly established by precedent if not by law.

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The Columbia Record

Columbia, S.C.

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Date: 9-7-71

Edition:

Author:

Editor: *John Montgomery*

Title:

Character:

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Classification:

Submitting Office: *Columbia*

☐ Being Investigated

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FOR MR. TOLSON

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(PENTAGON PAPERS)

BOSTON--A FEDERAL JUDGE HAS TEMPORARILY PREVENTED AN AIDE TO SEN. MIKE GRAVEL, D-ALASKA, FROM HAVING TO TESTIFY BEFORE A SECRET FEDERAL GRAND JURY ON THE RELEASE OF THE PENTAGON PAPERS.

U.S. DISTRICT JUDGE ARTHUR GABRITY JR. SAID WEDNESDAY GRAVEL'S LAWYERS COULD INTERVENE AND PREVENT DR. LEONARD BERNSTEIN FROM TESTIFYING BEFORE THE JURY, MEETING IN BOSTON TO DISCUSS HOW THE COPY WAS STOLEN, REPRODUCED AND GIVEN TO NEWSMEN.

GABRITY SCHEDULED A HEARING FOR SEPT. 10 ON MOTIONS TO HAVE DR. BERNSTEIN COMPLETELY DROPPED.

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Did Papers Play Role in Trip?

LONDON, Sept. 2 (UPI)—The Pentagon papers may have played a role in President Nixon's decision to visit Communist China, according to Daniel Ellsberg, the man who says he leaked the documents.

Speaking in a British Broadcasting Corp. (BBC) television interview filmed last month in Cambridge, Mass., and broadcast Thursday night, Ellsberg said:

"I would be glad to believe that the revelations in the papers had played some role. There are commentators who have guessed that it did on the basis of the fact that the administration was clearly in great pressure on its Vietnam policy in part because of the revelations of the Pentagon papers."

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 The Sunday Star (Washington) _____
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Date 9-4-71

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13 SEP 13 1971

Judge Blocks Quiz Of a Gravel Aide

BOSTON, Sept. 2 (UPI)—A federal judge has temporarily prevented an aide to Sen. Mike Gravel (D-Alaska) from having to testify before a federal grand jury on the release of the Pentagon papers.

U.S. District Judge Arthur W. Garrity Jr. said Wednesday that Gravel's lawyers could intervene and prevent Dr. Leonard Rodberg from appearing before the jury, meeting in Boston to discover how the study was taken, reproduced and given to newsmen.

Judge Garrity scheduled a hearing for Sept. 10 on motions to have the subpoena quashed.

On June 29, Gravel read into the public record parts of the 47-volume study on decision-making in Vietnam. During the reading, which stretched into early morning hours, he hired Dr. Rodberg to help him study the documents.

Gravel's lawyers said Dr.

Rodberg could not be subpoenaed because he was acting for the senator, who is permitted by the Constitution to inform his constituents on public affairs. Judge Garrity agreed that a subpoena could restrict that right.

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W. J. Moore

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The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

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Gravel allowed in aide quiz

Federal Judge W. Arthur Garrity Jr. ruled yesterday that Senator Mike Gravel (D-Alaska) has a right to intervene in the government's effort to quiz one of his aides in regard to the Pentagon Papers.

Dr. Leonard Rodberg, Senator Gravel's aide, had been subpoenaed to appear before the Federal Grand Jury last Friday.

The Grand Jury is said to be probing the distribution of the Pentagon Papers, some of which were leaked to several newspapers by Dr. Daniel Ellsberg.

Rodberg was not required to testify when attorneys Charles L. Fishmar and Robert Reinstein filed a motion in behalf of Gravel to intervene in the matter.

Gravel has said he intends to ask the Grand Jury if it is investigating him.

The motion to intervene states that all the acts performed by Rodberg were upon orders from Gravel and that Gravel is immune from judicial inquiry by virtue of his constitutional privileges and duties.

Judge Garrity set a hearing for Sept. 10

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THE BOSTON GLOBE
BOSTON, MASS.

THE BOSTON HERALD
TRAVELER
BOSTON, MASS.

THE BOSTON RECORD
AMERICAN
BOSTON, MASS.

Date: 9/2/71
Edition: Morning
Author:
Editor: Thomas Winship
Title: OMC LEK -
NATIONALITIES
Character: INTELLIGENCE
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Classification: 65-
Submitting Office: Boston
☐ Being Investigated

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102 SEP 28 1971

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EDITORIAL PAGE

We Have Been Waiting Mr. Mitchell!

Dell Publications announced that it was canceling its contract with Pentagon Paper peddler Dr. Daniel Ellsberg, for the publication of his book. Whatever their reason it was a step in the right direction.

Dr. Ellsberg (our modern Benedict Arnold) sought to make a fast buck telling it like he thought it is. Like a million others he is against the Vietnam war . . . but unlike others he alone stole secret documents and gave or sold them to the New York Times.

We are still waiting the indictment of the Times for either aiding or abetting the stealing of these documents, or for publishing them in a paperback form and netting a million dollars.

We called this crime to the attention of President Nixon's U.S. Attorney General John Mitchell and to date Mr. Mitchell has not extended us the courtesy of a reply to our telegram nor has he answered our telephone call.

The Times must be indicted. Mr. Mitchell, this is your sworn duty.

Over 2000 years ago the Roman statesman Cicero said it as brilliantly and accurately as anyone could say it today. This is how he warned his nation of the fatal consequences of treason from within.

"A nation can survive its fools, and even the ambitious, but it cannot survive treason from within. An enemy at the gates is less formidable for he is known and he carries his banner openly.

"But the traitor moves among those within the gates freely. The traitor appears familiar to his victims and he wears their face and their garments, and he appeals to the baseness that lies deep in the hearts of men.

"He rots the soul of a nation, he works secretly and unknown in the night to undermine the pillars of a city. He infects the body politic so that it can no longer resist. A murderer is to be feared less."

It is amazing how these words of Cicero apply themselves both to Dr. Ellsberg and the New York Times. The first amendment was never really the issue. Treason was. Atty. Gen. John Mitchell, the time is overdue for you to indict the New York Times for their dastardly act. Dr. Ellsberg already has been indicted. We are waiting as are so many others.

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p. 21 Daily Mirror

Date: 8/24/71
Edition:
Author:
Editor: Everett Walker
Title: MOLEK

Character:
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Submitting Office: NYO
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Were You Ever a Wobblie?

Repeating the Top Secret Clearance Process

DURING the Dog Days of August, a legion of officers in the U.S. armed forces and a phalanx of unknown civilians were given the news:

If they held top secret clearances, they were advised that unless they currently are working with top secret material, the clearance is being automatically cancelled by the U.S. government.

What do these tidings mean to them? At

S. L. A. Marshall

'Over the years this resurgence of red tape will engage the services of the FBI, the CIA and countless clerks and bureau hawkshaws at the cost of millions of dollars to the taxpayer.'

present, practically nothing. But should they ever return to some job that requires such a clearance, they will have to repeat the whole "clearing" process.

They will be fingerprinted, though their prints have not changed. Then they will spend hours filling out forms relating their travels abroad, identifying their ancestors and making note of their associations and affiliations, present and past.

They will be quizzed by security officers as to whether they ever belonged to the KKK, the Know-Nothing Party, the Wobblies, the Knights of the Mystic Sea or other organizations on the current taboo list. Then they will sit and wait while that Rube Goldberg invention, called the review process, grinds out a decision.

Over the years this resurgence of red tape will engage the services of the FBI, the CIA and countless clerks and bureau hawkshaws

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 The National Observer _____
 People's World _____

Date 8-30-71

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at the cost of millions of dollars to the taxpayer.

In my own case I have heard from two so-called Washington think tanks about their latest thoughts.

The message was that I was still cleared for top secret, but since I was no longer actively requiring that clearance, would I fill out the enclosed form acknowledging my discharge from the awesome responsibility? My knowledge of anything that might bring down the pillars of the temple being less than would fill a thimble punctured by a shell from Big Bertha, I was happy to comply.

But it did take time even as it made work for the mailman and no doubt the guardians of our security awaited the reply atremble, worrying about the possibility that another jackass would bolt and bedevil the system.

And what is this ridiculous convulsion all about?

Here is simply another wholesale mischief brought about directly by the capers of Daniel Ellsberg and his pal, Russo. These jokers from the world of science may stay steadfastly loyal to one another, but they seem not to give a hoot about how much trouble they give others.

To begin, there was a minor temble at Rand Corporation in Washington where the two had worked after a fashion and the security of which they proceeded to scuttle. A new set of security hardhats was rushed to the scene to lock the stable after the horse was gone.

Then out of California, rumbling was heard all the way to the banks of the Potomac. The security beagles dashed to the seeming breaches in the tumbling walls, thereby to save America from total catastrophe.

Here we have what might be called the capricious compounding of a felony. It is an

utterly senseless way to manage a bureaucracy, this penalizing of thousands of persons and millions of taxpayers, because of the actions of two or more misfits who allegedly betrayed their trust. But that is government for you. What we have is but another horrible example of the ill-conditioned reflex that provided Ellsberg with his lame excuse.

Years ago I knew Ellsberg when he was quiet, soft-spoken and had no hint of that glint in his eye. He was working in the Pentagon studying the nature of international crises and had his own theory to expound. The gist was that what is called an international crisis comes about when two sets of men in power feel their personal positions challenged and likely to become forfeited unless they act boldly or at least stand firm. Out of selfishness, they move ever closer to the collision course. None but a mpleton would reject this idea outright.

That I play with it now is not because I am interested in what makes Ellsberg tick.

'... out of California, rumbling was heard all the way to the banks of the Potomac. The security beagles dashed to the seeming breaches in the tumbling walls, thereby to save America from total catastrophe.'

What made the security managers behave like waterbugs is the question. It is here suggested that they were more concerned about their jobs than with the exercise of common sense and that is the general fault in the system.

(Mount Clipping in Space Below)

The Ellsberg defense raises interesting points

The government's case against Dr. Daniel Ellsberg will be interesting for a number of reasons. Legal wheels are turning and some lawyers are claiming that theft charges against Ellsberg will be hard to prove since there are no missing documents. That seems to be a tenuous point, but that is what makes lawsuits.

The question is being raised about presidents and other government officials who routinely take their "private" papers with them when they depart office. The Ellsberg defense will explore that question, to be sure.

A retired Pentagon security expert, William G. Florence, has testified to a congressional committee that there is only one-half of one per cent of the total material under classified seal that contains any sort of genuine secret. So the defense will insist upon proof that what Ellsberg did was not only illegal but damaging to the nation's security—not merely a violation of a departmental regulation and on embarrassment to sundry officials.

That Ellsberg edited sensitive material from the information—as he has claimed—would be a point in his defense, it would seem. He claims he was so convinced that the McNamara-ordered history of how the war started was essential public information that he was willing to risk violating a law to make it known.

It would be bad policy and law if the Ellsberg case concludes that public officials may King's X anything they choose. The point has to be subjected to the law, the courts and a jury, where Americans prefer to have controversy settled.

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PAGE 12A

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NEWS

SAN ANTONIO, TEXAS

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Edition: HOME

Author:

Editor:

Title:

Character:

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Classification:

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☐ Being Investigated

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Ellsberg Is Commended

13 Special to The New York Times

COLUMBIA, S. C., Aug. 25—
The Association for Education
in Journalism today narrowly
approved a resolution com-
mending Dr. Ellsberg for a
"valuable contribution to the
people's right to know."

Dr. Ellsberg, who said he
leaked the Pentagon papers to
newspapers, has been arraigned
on charges of unauthorized
possession of secret Govern-
ment documents.

In a related resolution, the
association applauded "the
courage and public service
spirit of The New York Times
and Washington Post and other
newspapers in publishing the
Pentagon papers."

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SIMILAR BOOK DUE

One Publisher Cancels Contract With Ellsberg

New York Times News Service

NEW YORK—The Dell Publishing Co. has canceled a \$150,000 contract with Dr. Daniel Ellsberg on grounds that he failed to provide a 20,000-word introduction to a book of his writings on the Vietnam war in time for its projected publication before the end of this month.

A similar book, tracing Ellsberg's transformation from hawk to dove and culminating with his role in leaking the secret Pentagon study to the news media, now will be issued by Simon & Schuster in November.

Mrs. Helen Meyer, president of Dell, confirmed yesterday that the book was scrapped two weeks ago because Ellsberg, who is facing trial in California on charges of having disclosed government secrets, was unable to complete the introduction. Mrs. Meyer said that part of the material had already been set in type.

"We had planned to bring out in one volume a collection of Dr. Ellsberg's previously published essays and public statements about Vietnam," she said. "We needed a new introduction that would bring his thinking right up to date and this he couldn't fulfill."

"We were very excited about the book because we thought he had a very important message — that's why we had planned a crash program to get the book out in August because it was timely. In a way we can't blame Dr. Ellsberg because he had other things to worry about."

Saying that Dell would lose between \$8,000 and \$10,000 in editorial and printing expenses incurred in the project, Mrs. Meyer dismissed the loss with this thought:

"The important thing in publishing is to understand that writers are not machines and that book contracts involve taking risks. And when we can't get what we're buying we better forget the whole thing."

Indicating that the contract was voided by mutual agreement, Mrs. Meyer said Ellsberg already had returned an unspecified sum of money that had been paid on the \$150,000 advance on royalties provided by

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OPEN TO DISCUSSION—

What Price Secrecy?

by Lloyd Shearer

WASHINGTON, D.C.

One of the most shocking snafus in the United States Government is its secrecy classification system.

Like some million-footed, multi-webbed fungus, it grows wild, almost always expanding, practically never contracting.

Would you believe, for example, that someone in the Navy Department has been stamping newspaper clippings "Secret"? and that as a result the Defense Department has had to publish a special directive ordering employees not to classify newspapers?

Would you believe that the Air Force Electronics Systems Division issued the following statement for use on selected documents: "Although the material in this publication is unclassified, it is assigned an overall classification of CONFIDENTIAL"?

Would you believe that no one in

government knows how many people in this country have the right to classify government documents TOP SECRET, SECRET, or CONFIDENTIAL? One Defense Department estimate given to a House subcommittee on June 29, 1971, is "hundreds of thousands."

20 million secrets

Would you believe that there are, according to the testimony of William G. Florence, a classification expert with 43 years of experience in government, 20 million classified papers currently held by the government of which 99 1/2 percent should not be classified at all?

Or that unnecessary classification is wasting \$50 million of the taxpayers' money each year?

Or that, according to the testimony of Walter Pincus, a former chief consultant to the Symington Subcommittee

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of the U.S. Senate Foreign Relations Committee, classification is used by the government not only to keep valuable information from the nation's potential enemies but to hide the mistakes of government officials, to prevent documentation of White House errors, and to limit the extent of internal opposition to and criticism of government policy?

Whether one believes it or not, the evidence is sufficient that the Federal government suffers from massive overclassification of information.

There is no penalty for overclassification in this country. The result, in the opinion of some critics, is that a small army of "fearful bird-brains" has grown up who believe in classifying everything—and not without cause. For, as William G. Florence recently testified: "To my knowledge, no one in the Department of Defense was ever dis-

ciplined for classifying information, regardless of how much the classification cost for unnecessary security protection or what damage resulted from the restriction against releasing the information to the public. But I have seen how rough a person can be treated for leaving classification markings off of information which he knows to be officially unclassified if someone 'up the line' thinks that a classification should have been applied."

However one feels about Dr. Daniel Ellsberg and his leaking of the once top secret, still classified Pentagon Papers, the fact is that the disclosure of those papers has made imperative a thorough overhaul of a faulty, outdated classification system.

At this moment, in one branch of the government alone, the Armed Forces, there are 31,048 people who have the

original authority to classify documents.

Of this number, 803 have the authority to classify them "Top Secret" originally.

Another 7687 have the authority to classify them "Secret" originally.

And all have the authority to classify them "Confidential."

From these 31,048 persons emanates a derivative classification authority flowing to countless civilians, assistants, consultants, and others connected or under contract to the Defense Department. No one seems to know exactly how many.

Can declassify, too

In addition to the authority to classify documents, all these 31,048 people have the authority to declassify documents.

"But in most cases," affirms Daniel Z. Henkin, a Defense Department secretary in charge of public affairs, "people are generally too busy to declassify. There are millions of documents still classified. 'Top Secret' and 'Secret' which don't belong in that category at all. It is the position of the Secretary of Defense Melvin Laird that as much material as possible be declassified."

History, however, will record Melvin Laird as the Defense Secretary who, from November, 1969, to the end of June, 1971, refused to make available, even on a classified basis, to the U.S. Senate Foreign Relations Committee a single page of the 7000-page-long Pentagon Papers.

At about the time he was publicly espousing declassification, Laird was

writing Sen. J. William Fulbright of the Foreign Relations Committee such negotiations as "... Access to and use of this document [the Pentagon Papers] has been extremely limited. It would clearly be contrary to the national interest to disseminate it more widely." (Dec. 20, 1969.)

On April 20, 1970, addressing 1500 people at the annual luncheon session of the Associated Press in New York, Laird said: "Let me emphasize my convictions that the American people have a right to know even more than has been available in the past about matters which affect their safety and security. There has been too much classification in this country."

Months later, Senator Fulbright again asked the Defense Secretary to turn over the Pentagon Papers to the Senate Foreign Relations Committee. Laird ignored the request.

Senators rebuffed

On June 14, 1971, Sen. Stuart Symington, another member of the Foreign Relations Committee, once more beseeched Laird for the Pentagon Papers on any kind of a classified basis. The committee members, he said, might study and glean from them some truth about our involvement in Vietnam so that they could legislate wisely on that prickly subject. Laird refused again, invoking his judgment which held that allowing a handful of U.S. Senators to see the documents would be contrary to the national interest.

Laird certainly did not read all 47 volumes of the Pentagon Papers before he himself refused to show any of them to the Senate Foreign Relations Committee. Says one of his assistants: "God, he was much too busy for that. I assume someone told him about them or he skimmed some of the papers, then decided against releasing any of them."

Had Melvin Laird declassified some of the Pentagon Papers, a large share of which are harmless, repetitious and incomplete history, Daniel Ellsberg might never have leaked them to *The New York Times*.

Copy to Fulbright

According to Dr. Ellsberg, he felt that Congress was entitled to know as much about the Pentagon Papers as he who was not a member of Congress. Which, he declares, is why he gave the first copy of the papers to Senator Fulbright in October, 1969. He hoped that Fulbright would get them declassified or made available to members of the Senate Foreign Relations Committee. Instead, Fulbright locked them in his safe and showed them to no one.

Ellsberg waited a year for Fulbright to surface the papers. Fulbright tried. He pressed the Secretary of Defense to release them on any basis. But Laird would not budge. He simply responded to Fulbright with a constant no.

Ellsberg thereupon consulted other members of the government who, themselves afraid to accept the papers, suggested that he leak them to *The New York Times*. Two who accepted the papers were Rep. Paul McCloskey of California and Sen. Mike Gravel of Alaska. Both felt that the people were entitled to some basic truths on how this nation went to war in Vietnam.

It was only after Daniel Ellsberg leaked some but not all of the Pentagon Papers to *The New York Times* two months ago, that Laird finally made the documents available to the House and Senate leadership on a classified basis.

By then two district Federal courts had held that there was nothing in the papers which clearly threatened the national interest, and the Supreme Court held that newspapers could not be restrained, prior to publication, from printing the Pentagon Papers or some similar study on the grounds of national security.

Ironically enough, it was not Robert McNamara, the Defense Secretary who originally ordered the Vietnam study, who classified it "Top Secret."

The Pentagon Papers were so classified by Leslie Gelb, the civilian head of the task force whose members wrote them. Says Gelb, now with the Brookings Institution: "I just assumed I had the right to originally declare them 'Top Secret.' I don't know who gave me that right. I remember discussing it with

someone. Since some of the material used in the papers was top secret, I classified all of them top secret. I never knew I also had the right to declassify them since I also had the right to originally classify them. That comes as news to me. I guess I don't know the classification setup too well."

If there are 31,048 persons in the Armed Forces who have the authority to classify documents, how many are there in the State Department, the Justice Department, the Atomic Energy Commission, the Secret Service, the Treasury Department, and hundreds of other government branches and agencies?

Moreover, who are these classifiers? Who chooses them? What are their qualifications?

People in and out of government are given the authority to classify and declassify information not by any law legislated by Congress but by virtue of Executive Order 10501 issued in November, 1953, by Dwight Eisenhower and amended in February, 1963, by John F. Kennedy.

There is no section of the U.S. Constitution which grants the President express authority to issue any such order. One can find implied authority in Article II, Section 3, "...He [the President] shall take care that the laws be faithfully executed." But that is all.

Executive Order 10501

Executive Order 10501 empowers persons in and out of government with classification authority by virtue of the position they occupy and not by their qualifications.

What about former Presidents of the United States? Are they allowed to take "Top Secret" documents and draw from them in writing memoirs for private gain? Or take Dean Acheson, Secretary of State under Truman and author of *Present at the Creation*—is it permissible for him mentally to declassify

top secret information gleaned from top secret papers and incorporate them in his books? Or how about Acheson's son-in-law, William Bundy, who advised Lyndon Johnson on escalating the war in Vietnam? As the editor-to-be of *Foreign Affairs*, will Bundy filter from his mind all the top secret information he obtained while in government?

Presidents have always had broad discretion in selecting the documents, memoranda and other papers they take with them when they leave office. When Lyndon Johnson departed the White House he took 29 truckloads of documents for transplanting in the LBJ Library in Austin.

Authority untested

"Since the authority for classifying information came originally from the President while he was in office," says a Department of Justice spokesman, "the authority of a former President to declassify documents which originated during his tenure has rarely been questioned and never tested. While the government has strict rules prohibiting officials or former officials of the government from selling information which came to them as a result of their government work, these rules have not been applied to Presidential memoirs."

Neither have such rules been applied to the memoirs of generals, former Cabinet officials, secretaries or anyone else in government.

Lyndon Johnson who received a \$1 million advance for his soon-to-be released memoirs entitled *The Vantage Point*, was so concerned about what his key White House aides might write about him and his Administration that again, according to the Justice Department, "He gave serious consideration to proposing that his appointees sign an agreement not to disclose information which came to them as a result of their work. Although Justice Department attorneys did considerable research on the legality of such an agreement, the whole project was finally shelved."

Inconsistencies noted

All this of course is not to argue that the government has no right to or should not classify certain sensitive information. It *must* have that right. What it boils down to is that the government's present secrecy classification system is an undeniable mess riddled with inequity, stupidity and inconsistency.

It is quite in order for Lyndon Johnson, Walt Rostow, McGeorge Bundy, Dean Acheson and dozens of others in and out of government to make use of the raw materials which constitute the McNamara study. But the public is not allowed to see a single page.

Reform is in order—is it not? ■



Leslie Gelb, civilian head of the task force that wrote the documents, classified them "Top Secret." "I never knew I also had the right to declassify them."



Rep. William S. Moorhead (D., Pa.). As chairman of the subcommittee on Government Operations, he hopes to find a legislative solution to present secrecy system. He'd reduce overclassification to cut cost to taxpayers for the storage of unnecessary information.



Defense Secretary Melvin Laird, who consistently refused to declassify "top secret" Pentagon Papers.



Dr. Daniel Ellsberg: he worked on the documents and leaked them to "The New York Times."



Sen. J. William Fulbright was given a copy of the papers by Ellsberg, locked them in safe for a year.

DR. DANIEL ELLSBERG



TOP SECRET

CONFIDENTIAL



SECRETARY OF DEFENSE MELVIN LAIRD

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Russo Not Mistreated By Jailers, Judge Says

LOS ANGELES (AP)—A judge acknowledged yesterday that Anthony Russo was placed in an isolation cell and his legs shackled Monday night but denied allegations that Russo was mistreated by jail authorities.

U.S. Dist. Court Judge William P. Gray also said he plans no further action unless Russo's lawyer gives him additional evidence to support the allegations.

Daniel Ellsberg, 40, charged with unauthorized possession of the secret Pentagon study on U.S. involvement in Vietnam, said Russo had been manacled and threatened in the Los Angeles County Jail.

Gray sent Russo to jail Monday on a contempt citation for refusing to testify to a federal grand jury investigating the leak of the study.

Russo, 34, a research analyst for the county probation department and a former coworker of Ellsberg at the Rand Corp. research center in nearby Santa Monica, was ordered jailed until he answers the jury's questions or until the jury's term expires, which could be as long as 18 months.

Gray said U.S. Marshal Gaylord Campbell, whom he ordered to investigate allegations Gray said he learned from a journalist, gave this account:

After Russo surrendered late Monday to begin serving his sentence, the computer handling the county jail booking process broke down and deputies switched to a slower manual process.

The jail's booking area became overcrowded and Russo began to protest loudly that the rights of his fellow prisoners weren't being observed.

He was taken to an isolation cell in accordance with standard jail procedure and to avoid possible trouble with other prisoners. The jail personnel did not know his identity at this time.

When Russo continued to cause a commotion in the cell, he was handcuffed and his legs

shackled. On Tuesday morning the restraints were removed and Russo was taken from the isolation cell and booked.

Campbell, the judge said, reported that a deputy U.S. marshal tried to get Russo's version of the incident but Russo declined to talk without his attorney. Campbell said the deputy marshal did not see any marks on Russo.

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(ELLSBERG)

FORT COLLINS, COLO.--DR. DANIEL ELLSBERG, THE MAN CHARGED WITH RELEASING THE PENTAGON PAPERS, SAID FRIDAY WHEN HE TURNED THE DOCUMENTS OVER TO THE NEW YORK TIMES HE WASN'T REALLY SURE WHETHER WAS BREAKING ANY LAW.

"I WASN'T AWARE THAT I WAS DOING SOMETHING ILLEGAL, BUT I HAD AN INCLINATION THAT I WAS," HE TOLD NEWSMEN BEFORE HE WAS TO ADDRESS THE NATIONAL STUDENT ASSOCIATION ANNUAL CONVENTION.

"I SHOULD HAVE GOTTEN THE PAPERS OUT TO THE PRESS SOONER," HE SAID, ADDING THAT A "GREAT DEAL OF SUNLIGHT HAS BEEN THROWN ON THE SECURITY SYSTEM BY THEIR PUBLICATION."

ELLSBERG SAID HE WAS GLAD HE RELEASED THE PAPERS BECAUSE CONGRESS IS NOW ASKING FOR MORE SECURITY INFORMATION.

HE REFERRED TO MORE DOCUMENTS, "TEN TIMES" THE QUANTITY OF THE PENTAGON PAPERS, WHICH HE HAD TURNED OVER TO THE SENATE FOREIGN RELATIONS COMMITTEE, SAYING THEY TOO SHOULD BE MADE AVAILABLE TO THE PUBLIC.

"THE FULL IMPACT OF THE ENTIRE PENTAGON DOCUMENTS HAS NOT BEEN FELT YET," HE SAID.

HE STRESSED THAT THE PAPERS HE RELEASED TO THE TIMES CONTAINED "STRONG LIMITATIONS," BECAUSE OF THE AUTHORS.

"THE PAPERS CAN'T BE INTERPRETED AS BEING DEFINITIVE BECAUSE THEY WERE WRITTEN BY PEOPLE IN THE GOVERNMENT WHO ARE BIASED," HE SAID.

COMMENTING ON THE CHARGES FILED AGAINST HIM FOR THE RELEASE OF THE CLASSIFIED DOCUMENTS, ELLSBERG SAID "THE ODDS WERE FAVORING" THAT HE WOULD GO TO JAIL.

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Mistreatment of Friend Of Ellsberg Not Proved

LOS ANGELES, Aug. 19 (AP)—A judge said today an official probe turned up nothing to support allegations that Anthony Russo, a principal in the Pentagon papers case, was mistreated in jail.

U.S. District Court Judge William P. Gray also said he plans to take no further action in the case unless Russo's lawyer gives him additional evidence to support the allegations.

Daniel Ellsberg, 40, charged with unauthorized possession of the secret Pentagon study on U.S. involvement in Vietnam, said Russo had been manacled and threatened in the Los Angeles County Jail.

Gray said U.S. Marshal Gaylord Campbell, whom he ordered to make an investiga-

tion of allegations, Gray said he learned from a journalist, gave this account:

After Russo surrendered late Monday to begin serving his contempt sentence for refusing to testify to a grand jury in the Ellsberg case, the computer handling the county jail booking process broke down and deputies switched to a slower manual process.

The jail's booking area became overcrowded with prisoners and Russo began to object loudly, protesting that the civil rights of his fellow prisoners weren't being observed.

He was taken to an isolation cell to avoid possible trouble. The jail personnel didn't know his identity at this time.

When Russo continued to cause a commotion in the isolation cell, he was handcuffed and his legs were shackled. On Tuesday morning, the restraints were removed and Russo was taken from the isolation cell and finally booked.

Campbell, the judge said, reported that a deputy U.S. marshal tried to get Russo's version of the incident, but that Russo declined to talk without his attorney.

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Russo Jail Treatment Is Probed

LOS ANGELES, Aug. 18 (AP)—A federal judge ordered an investigation today into allegations that Dr. Daniel Ellsberg's colleague in the Pentagon papers case, Anthony J. Russo, was shackled and mistreated in jail.

Ellsberg, 40, himself free on a \$50,000 bond, said on a Los Angeles radio show that Russo spent Tuesday night in shackles and chains on the concrete floor of an isolation cell at the county jail.

Russo, 34, surrendered and was ordered to jail Monday on a contempt citation for refusing to testify before a federal grand jury here investigating the leak to newspapers of the secret Pentagon papers.

U.S. Dist. Court Judge William P. Gray, who ordered Russo to jail, directed the U.S. marshal to report on Russo's treatment.

Ellsberg said jail officials told him Russo was placed in an isolation cell for refusing to cooperate during the booking procedure.

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RUSSO 8/19 HC
 LOS ANGELES (UPI) --ANTHONY J. RUSSO, JAILED FOR CONTEMPT OF COURT IN THE PENTAGON PAPERS INVESTIGATION, WAS PUT IN AN ISOLATION CELL OVERNIGHT, HANDCUFFED AND HIS LEGS SHACKLED AFTER HE MADE LOUD PROTESTS ABOUT THE TREATMENT OF OTHER PRISONERS, IT WAS DISCLOSED THURSDAY.

U.S. DISTRICT JUDGE WILLIAM P. GRAY ORDERED AN INVESTIGATION OF THE INCIDENT AND DECIDED TO TAKE NO FURTHER ACTION ABOUT THE ALLEGED MISTREATMENT AFTER HEARING A REPORT FROM U.S. MARSHAL GAYLORD CAMPBELL.

U.S. DISTRICT JUDGE WILLIM P. GRAY ORDERED AN INVESTIGATION OF THE INCIDENT AND DECIDED TO TAKE NO FURTHER ACTION ABOUT THE ALLEGED MISTREATMENT AFTER HEARING A REPORT FROM U.S. MARSHAL GAYLORD CAMPBELL.

RUSSO, WHO WAS A COLLEAGUE OF DANIEL ELLSBERG AT THE RAND CORP. FROM WHICH THE SECRET DOCUMENTS ABOUT HIS ORIGINS OF THE VIETNAM WAR WERE TAKEN, SURRENDERED MONDAY AFTER CONSISTENTLY REFUSING TO TELL A GRAND JURY WHAT HE KNEW OF THE "LEAK."

CAMPBELL SAID THAT AFTER RUSSO WAS TAKEN INTO CUSTODY, THE COMPUTER WHICH HANDLES COUNTY JAIL BOOKINGS BROKE DOWN AND DEPUTIES CHANGED TO A SLOWER HAND-BOOKING PROCESS. THE AREA SOON BECAME OVERCROWDED WITH INCOMING PRISONERS.

RUSSO WAS SAID TO HAVE OBJECTED LOUDLY AT THIS, PROTESTING THAT THE CIVIL RIGHTS OF THE PRISONERS WERE NOT BEING OBSERVED.

CAMPBELL SAID THAT RUSSO'S IDENTITY WAS NOT KNOWN AT THE TIME. THE MARSHAL SAID THAT TO AVOID POSSIBLE TROUBLE WITH THE PRISONERS AND IN ACCORD WITH STANDARD JAIL PROCEDURE, RUSSO WAS TAKEN TO AN ISOLATION CELL.

WHEN RUSSO CONTINUED TO CAUSE A COMMOTION, CAMPBELL SAID, HE WAS HANDCUFFED AND HIS LEGS WERE WHACKLED. WHEN HE WAS REMOVED FROM THE ISOLATION CELL, HIS BOOKING PROCESS WAS COMPLETED.

RUSSO'S LAWYER, MIACHAEL P. BALABAN, SAID THAT WHEN HE VISITED RUSSO ON TUESDAY HE OBSERVED MARKS ON THE PRISONER'S WRISTS AND ANKLES. A DEPUTY MARSHAL SAID HE DID NOT OBSERVE ANY MARKS INDICATING RUSSO HAD BEEN INJURED.

RUSSO WAS SENTENCED TO AN INDEFINITE TERM IN JAIL UNTIL HE AGREES TO ANSWER QUESTIONS BEFORE THE GRAND JURY.

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WASHINGTON CAPITAL NEWS SERVICE

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UP1-12

(ELLSBERG)

LOS ANGELES--DANIEL ELLSBERG, WHO SAID HE DID HIS DUTY AS A RESPONSIBLE AMERICAN AND WOULD "ANSWER TO ALL THE CONSEQUENCES," APPARENTLY PLANNED TODAY TO ADMIT HE LEAKED THE PENTAGON PAPERS BUT TO DENY THAT WAS A CRIME.

ELLSBERG WAS SCHEDULED TO BE ARRAIGNED TODAY ON CHARGES HE BROKE FEDERAL SECURITY LAWS BY REVEALING THE CLASSIFIED STUDY OF THE WAR IN VIETNAM.

HE WAS SCHEDULED TO APPEAR FIRST BEFORE U.S. MAGISTRATE RALPH GEFFEN, WHO WAS TO CONDUCT A DRAWING BY LOT TO SELECT A U.S. DISTRICT JUDGE TO HEAR ELLSBERG'S CASE. THE JUDGE THEN WAS EXPECTED TO CONDUCT THE ARRAIGNMENT LATER IN THE DAY, READING ELLSBERG THE INDICTMENT AGAINST HIM, GIVING HIM A CHANCE TO PLEAD GUILTY OR INNOCENT.

THE APPEARANCE BEFORE GEFFEN WAS SCHEDULED FOR 8:45 A.M. PDT (11:45 A.M. EDT) AND THE ARRAIGNMENT WAS EXPECTED ABOUT 2 P.M. PDT (5 P.M. EDT).

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UPI-31

(ELLSBERG)

LOS ANGELES --DANIEL ELLSBERG WON'T GO ON TRIAL UNTIL SOMETIME NEXT YEAR, WHEN HE PLANS TO BASE HIS DEFENSE ON THE AMERICAN PUBLIC'S RIGHT TO KNOW THE SECRETS OF THE PENTAGON PAPERS.

"THERE ARE VERY IMPORTANT ISSUES TO BE RAISED," ELLSBERG TOLD NEWSMEN BEFORE PLEADING INNOCENT MONDAY AT HIS ARRAIGNMENT FOR BREAKING FEDERAL SECURITY LAWS.

"THEY ARE ISSUES OF WAR AND PEACE, LIFE AND DEATH, AND THEY ARE INCOMPARABLY MORE IMPORTANT THAN WHAT HAPPENS TO ME."

HE SAID HE WAS WORKING ON MORE DISCLOSURES.

U.S. DISTRICT JUDGE WILLIAM M. BYRNE WAS CHOSEN BY LOT TO PRESIDE OVER ELLSBERG'S TRIAL. AFTER ALLOWING TIME FOR PRE-TRIAL MOTIONS BY ELLSBERG'S LAWYERS, THE JUDGE SCHEDULED A HEARING FOR JAN. 4 OF NEXT YEAR, WHEN THE TRIAL DATE WILL BE SET. LEGAL SOURCES SAID THE TRIAL WOULD NOT BEGIN UNTIL FEBRUARY OR MARCH AT THE EARLIEST.

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(Indicate page, newspaper, city and state.)

W. J. Sullivan

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THE BOSTON GLOBE
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THE BOSTON HERALD
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BOSTON, MASS.

THE BOSTON RECORD
AMERICAN
BOSTON, MASS.

Date: 8/18/71
Edition: Morning
Author: Bruce McCabe
Editor: Thomas Winship
Title: MC LEK
NATIONALITIES
Character: INTELLIGENCE
or Espionage
Classification: 65-5236Sub1
Submitting Office: Boston
☐ Being Investigated

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More 'Pentagon Papers' coming

By Bruce McCabe
Globe Staff

A Boston publishing house announced yesterday it is publishing a four-volume set of "authentic" Pentagon papers — leaving it for the public to decide what to call the material it has been looking at for the past two months or so.

"This is the real McCoy, the real thing, the real study," said Gobin Stair, director of Beacon Press, which will publish the set, at a press conference that appeared to be devoted mostly to questions about what "Pentagon papers" are and who can lay claim to their possession.

Stair and Beacon Press editor-in-chief Arnold Tovell attempted gamely to brush off queries about what it was that Daniel Ellsberg gave the New York Times, or how to characterize the material gathered in the Bantam Books paperback now on the bookstore shelves and newstands.

They also declined to characterize what has been described as "a complete version" of Pentagon Papers — 47 volumes of narrative and documents — which the MIT Press has decided it doesn't want to publish after being offered the material. The "complete version" was described as "twice as large" as the amount con-

tained in the Bantam Books paperback.

Beacon Press's Pentagon papers, it was announced, are being provided by US Sen. Mike Gravel (D-Alaska), who has already placed them in the public record — specifically, the record of the June 29 session of Gravel's Senate Subcommittee on Public Grounds and Buildings. Called "Senator Gravel Edition of the Pentagon Papers," the set will sell for \$45 in hardcover and \$20 in paperback.

The Beacon Press Pentagon papers will run to about 2½-million words and 3000 pages.

After opening the press conference with the emphatic assertion that the "Senator Gravel Edition of the Pentagon Papers" was "not shortened, abbreviated, or edited," Stair said that it was "95 percent complete."

"What happened to the other five percent?" he was asked.

"We don't know," Tovell answered.

Both the director and editor-in-chief appeared to be in agreement that they were "disappointed by the failure of the American press to put the authentic 'Pentagon Papers' into the public record despite Supreme Court support."

Asked to indicate what is in the "Senator Gravel Edition of the Pentagon Papers" that hasn't been publicized before, however, Tovell said:

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"Were not revealing the material until we publish it." This will be, he estimated, around "late October."

Beacon Press is a non-profit publishing house which operates under the auspices of the Unitarian Universalist Association, and Stair and Tovell admitted that its comparatively small size among publishing enterprises made the accelerated publishing of its Pentagon papers a difficult task.

But, Stair added, "the public, we feel, is entitled to reasonable public disclosure of the material rather than sketchy journalistic synopses."

The statement appeared to echo Daniel Ellsberg's recent assertion that "the American public should have all these papers and doesn't have them yet," although, like the Ellsberg statement, it failed to indicate exactly how many papers there are.

Stair and Tovell declined to go much into how Gravel and Beacon Press got together on papers, although Stair did say that the Senator was "a Unitarian — not too active — but a Unitarian."

Gravel made his announcement of the arrangement at a noon meeting of San Francisco's Commonwealth Club and was unable to be present for the announcement in Boston.

The material, Stair and Tovell said, will not be copyrighted.

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Ellsberg Granted Delay in Trial

Daniel Ellsberg, pleading not guilty to federal charges of stealing the secret Pentagon papers, obtained a delay until early 1972 before his trial opens in Los Angeles.

Ellsberg, a former Defense Department analyst, who has admitted giving the documents to the press, entered his formal plea at a brief hearing yesterday in Los Angeles.

After the hearing, his attorneys made the formal move for a 90-day postponement so they could try a series of legal maneuvers.

Ellsberg Stays on Bail

Yesterday U.S. District Judge William M. Byrne was chosen by lot to preside over Ellsberg's trial. The judge scheduled a hearing for Jan. 4 on motions and to set a trial date.

Legal sources said the trial would not begin until at least February or March.

The judge gave the defense until Oct. 29 to submit its motions. The prosecution has until Dec. 13 to submit counter-arguments.

Ellsberg continued free on \$50,000 bond, and said he would return to his research job at the Massachusetts Institute of Technology.

Eavesdropping At Issue

Among other challenges, Ellsberg's lawyers will attempt to get the charges dismissed on the ground that some of the government's evidence resulted from illegal electronic eavesdropping. The government denies eavesdropping.

Meanwhile, a colleague of Ellsberg, when the two were employed by the Rand Corp., Anthony J. Russo, went to jail under a contempt of court order.

Russo has been convicted of contempt for refusing to testify before the federal grand jury that charged Ellsberg.

Russo's attempt to stay out of jail failed yesterday when Supreme Court Justice Williams O. Douglas refused to postpone the jailing order. Russo then surrendered to the U.S. marshal and was placed in jail.

In his challenge to the order,

Russo had suggested that the grand jury was without power to question him because it may have relied on evidence from illegal eavesdrops.

Douglas said Russo presented no evidence or even a suspicion "that his wires had been tapped or that wires of others had been tapped with the result that his privacy had been implicated."

For Term of Jury

Without "some credible evidence that the prosecution violated the law," Douglas said, he could not postpone Russo's imprisonment.

Russo will have to remain in jail until the grand jury concludes its work, or until he

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agrees to answer its questions.

Ellsberg and Russo were employed by Rand at the time the Justice Department says Ellsberg stole the Pentagon papers.

In Ellsberg's court appearance yesterday, he entered not guilty pleas twice, speaking in a soft voice.

He is charged with one count of stealing the documents, and with a second count of illegally possessing them. If convicted, he could get a sentence of up to 10 years in prison or a fine of up to \$10,000 on each count.

"Instructive Issues"

After the hearing, Ellsberg told newsmen on the courthouse

steps that he would try to make the contents of the Pentagon papers a part of his defense.

"There are very instructive issues to be raised," he said. "The issues are of war and peace, life and death, and they are incomparably more important than what happens to me."

Thus, he said, he would seek to give the jury "an opportunity to read the Pentagon papers very closely."

Ellsberg's pleas were entered before Byrne, who will be the judge at the trial.

Byrne, a Democrat, was appointed last year by President Nixon. He is a former U.S. attorney in Los Angeles.



—Associated Press

Anthony J. Ruso (left) and Daniel Ellsberg in Los Angeles.

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UPI-140

(RUSSO)

APPROX. 1937

WASHINGTON--SUPREME COURT JUSTICE WILLIAM O. DOUGLAS REFUSED TODAY TO GRANT A REPRIEVE TO ANTHONY J. RUSSO JR., A FORMER COLLEAGUE OF DANIEL ELLSBERG, IN A CONTEMPT CASE INVOLVING THE PENTAGON PAPERS.

RUSSO, 34, WHO WORKED WITH ELLSBERG AT THE RAND CORP., IN SANTA MONICA, CALIF., WAS SCHEDULED TO GO TO JAIL TODAY FOR HIS REFUSAL TO ANSWER QUESTIONS ABOUT THE SECRET VIETNAM WAR STUDY FOR A FEDERAL GRAND JURY IN LOS ANGELES. THE SAME GRAND JURY HAD ALREADY INDICTED ELLSBERG FOR HIS ACTIVITIES IN LEAKING THE STUDY TO THE NEWSPAPERS.

RUSSO WAS SEEKING A HEARING ON WHETHER QUESTIONS PUT TO HIM STEMMED FROM ILLEGAL EAVESDROPPING.

DOUGLAS SAID THE STANDING OF GRAND JURY WITNESSES TO RAISE SUCH QUESTION HAS GENERATED CONFLICTING OPINIONS AMONG THE U.S. CIRCUIT COURTS AND IS AN IMPORTANT ISSUE.

BUT HE SAID THE GOVERNMENT TOLD THE FEDERAL DISTRICT COURT IN LOS ANGELES WHICH ORDERED RUSSO TO TESTIFY THAT "NO WIRETAPS OF ANY KIND WERE USED IN THIS CASE."

"THERE MUST BE SOME CREDIBLE EVIDENCE THAT THE PROSECUTION VIOLATED THE LAW BEFORE PONDEROUS JUDICIAL MACHINERY IS INVOKED TO DELAY GRAND JURY PROCEEDINGS," DOUGLAS SAID.

RUSSO MAY BE CONFINED FOR THE LIFE OF THE GRAND JURY IF HE CONTINUES TO REFUSE TO TALK. HE HAS BEEN PROMISED THAT HE WILL NOT BE PROSECUTED IN CONNECTION WITH ANY MATTER ABOUT WHICH HE MIGHT TESTIFY.

SUPREME COURT JUSTICE HUGO L. BLACK ON AUG. 10 ALLOWED RUSSO TO REMAIN FREE UNTIL TODAY TO ALLOW TIME FOR ALL THE PAPERS IN THE CASE TO REACH DOUGLAS' VACATION HOME IN GOOSE PRAIRIE, WASH.

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PAPERS 7-28 NX

WASHINGTON (UPI) --CONGRESSMEN TRYING TO SIFT OUT THE SIGNIFICANCE OF THE PENTAGON PAPERS TURNED FOR HELP TODAY TO DANIEL ELLSBERG, THE MAN WHO LEAKED TO THE PRESS PORTIONS OF THE TOP SECRET VIETNAM WAR HISTORY.

THE FORMER DEFENSE AIDE WAS SLATED TO TAKE PART IN THE SECOND DAY OF THE CONGRESSIONALLY SPONSORED CONFERENCE ON THE PAPERS.

PARTICIPATING IN THE FIRST DAY'S MEETING WERE AMERICANS WHO HAVE SPECIALIZED IN OR OUT OF GOVERNMENT ON SOUTHEAST ASIA AND SEVERAL VIETNAMESE CITIZENS LIVING IN THE UNITED STATES. ALONG WITH THE 18 DEMOCRATIC CONGRESSMEN SPONSORING THE CONFERENCE. VIRTUALLY ALL WERE CRITICS OF PAST AND PRESENT U.S. POLICY TOWARD VIETNAM.

THE SPONSORS SAID INVITATIONS WERE EXTENDED TO POLICY DEFENDERS TO PARTICIPATE IN THE INTERPRETATION OF THEIR GROUP'S EFFORT TO JUDGE THE IMPACT OF THE PAPERS' REVELATIONS BUT THAT NONE ACCEPTED.

ON TUESDAY THE LAWMAKERS AND THE OVERWHELMINGLY YOUTHFUL AUDIENCE HEARD THREE OF THE VIETNAMESE DELEGATES CALL FOR A TOTAL U.S. WITHDRAWAL FROM VIETNAM. THE AMERICANS CRITICIZE DEMOCRATIC AND REPUBLICAN ADMINISTRATORS FOR ALLEGEDLY LYING AND DECEIVING THE PUBLIC ABOUT THE U.S. INVOLVEMENT AND THE CONGRESS AND THE PRESS FOR ALLEGEDLY PERMITTING THEMSELVES TO BE DUPED.

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ELLSBERG 8-16 NX

DAY LD

BY TERRANCE W. MCGARRY

LOS ANGELES (UPI)--DANIEL ELLSBERG, WHO SAID HE DID HIS DUTY AS A RESPONSIBLE AMERICAN AND WOULD "ANSWER TO ALL THE CONSEQUENCES," APPARENTLY PLANNED TODAY TO ADMIT HE LEAKED THE PENTAGON PAPERS BUT TO DENY THAT WAS A CRIME.

ELLSBERG WAS SCHEDULED TO BE ARRAIGNED TODAY ON CHARGES HE BROKE FEDERAL SECURITY LAWS BY REVEALING THE CLASSIFIED STUDY OF THE WAR IN VIETNAM.

HE WAS SCHEDULED TO APPEAR FIRST BEFORE U.S. MAGISTRATE RALPH GEFFEN, WHO WAS TO CONDUCT A DRAWING BY LOT TO SELECT A U.S. DISTRICT JUDGE TO HEAR ELLSBERG'S CASE. THE JUDGE WAS THEN EXPECTED TO CONDUCT THE ARRAIGNMENT LATER IN THE DAY, READING ELLSBERG THE INDICTMENT AGAINST HIM, GIVING HIM A CHANCE TO PLEAD GUILTY OR INNOCENT.

THE APPEARANCE BEFORE GEFFEN WAS SCHEDULED FOR 8:45 A.M. PDT (11:45 A.M. EDT) AND THE ARRAIGNMENT WAS EXPECTED ABOUT 2 P.M. PDT (5 P.M. EDT).

ELLSBERG "WILL MAKE AN APPEARANCE AND WILL ENTER A PLEA OF INNOCENT, OF COURSE," SAID ONE OF ELLSBERG'S ATTORNEYS, HARVARD LAW SCHOOL PROFESSOR LEONARD B. BOUDIN.

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WHEN HE WAS ARRESTED, AND IN PUBLIC APPEARANCES SINCE THEN, ELLSBERG ADMITTED THAT HE LEAKED TO NEWSMEN THE CLASSIFIED STUDY OF THE ORIGINS OF THE VIETNAM WAR COMMISSIONED BY THE PENTAGON. HE HAD ACCESS TO IT AS A RESEARCHER FOR A RAND CORP. "THINK TANK".

"ALL THESE ACTIONS WERE CLEARLY IN CONTRADICTION TO SECURITY REGULATIONS," ELLSBERG SAID AT THE TIME.

"NEVERTHELESS, I FELT AS AN AMERICAN CITIZEN, A RESPONSIBLE AMERICAN CITIZEN, I COULD NO LONGER COOPERATE IN CONCEALING THIS INFORMATION FROM THE AMERICAN PUBLIC.

"I DID THIS CLEARLY AT MY OWN JEOPARDY. I AM PREPARED TO ANSWER TO ALL THE CONSEQUENCES OF THESE DECISIONS...WOULDN'T YOU GO TO PRISON TO HELP END THE WAR?"

IF CONVICTED, ELLSBERG COULD BE SENTENCED TO UP TO 10 YEARS IN PRISON AND A \$10,000 FINE. HE IS SPECIFICALLY CHARGED WITH TWO OFFENSES--"UNAUTHORIZED POSSESSION" AND "CONVERTING TO HIS OWN USE" WHAT THE INDICTMENT DESCRIBED AS "EXECUTIVE BRANCH DOCUMENTS CLASSIFIED TOP SECRET."

THE PUBLICATION OF PORTIONS OF THE 47-VOLUME STUDY IN THE NEW YORK TIMES, WASHINGTON POST, LOS ANGELES TIMES AND OTHER NEWSPAPERS CAUSED A NATIONWIDE UPROAR AND LED TO AN HISTORIC CONFRONTATION BETWEEN THE GOVERNMENT AND THE PRESS.

THE STUDY WAS SEIZED ON BY SOME COMMENTATORS AS PROOF THE GOVERNMENT CONSISTENTLY AND DELIBERATELY LIED TO THE AMERICAN PUBLIC AS THE UNITED STATES BECAME MORE AND MORE ENMESHED IN THE WAR IN INDOCHINA, MADE CRUCIAL DECISIONS WITHOUT REALIZING THEIR CONSEQUENCES AND IGNORED WARNINGS FROM WITHIN THE GOVERNMENT.

THE GOVERNMENT'S EFFORTS TO FORBID NEWSPAPERS TO PUBLISH THE DOCUMENTS WOUND UP IN A BATTLE BEFORE THE SUPREME COURT. THE JUSTICES RULED 6-3 IN FAVOR OF THE PRESS.

ELLSBERG HAS BEEN FREE ON \$50,000 BOND SINCE HE SURRENDERED TO THE U.S. ATTORNEY'S OFFICE IN BOSTON JUNE 28, THREE DAYS AFTER A WARRANT WAS ISSUED IN LOS ANGELES FOR HIS ARREST AFTER INDICTMENT BY A GRAND JURY.

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ARRAIGN 8-14 NX

LOS ANGELES (UPI)--ANTICIPATING POSSIBLE ANTI-WAR DEMONSTRATORS, A U.S. MARSHAL SAID FRIDAY THAT NO DEMONSTRATIONS WILL BE PERMITTED INSIDE THE FEDERAL COURTHOUSE AT MONDAY'S SCHEDULED ARRAIGNMENT OF DR. DANIEL ELLSBERG.

MARSHAL GAYLORD CAMPBELL SAID PICKETS COULD DEMONSTRATE ON THE SIDEWALK OUTSIDE THE COURTHOUSE BUT WOULD HAVE TO STAY OFF GOVERNMENT GROUNDS.

ELLSBERG, WHO IS CHARGED WITH UNAUTHORIZED POSSESSION AND USE OF THE "PENTAGON PAPERS," IS SCHEDULED TO APPEAR AT 8:45 A.M. MONDAY BEFORE U.S. MAGISTRATE RALPH GEFFEN.

ELLSBERG'S FRIEND AND COLLEAGUE AT THE RAND CORP., ANTHONY J. RUSSO, IS EXPECTED TO SURRENDER TO THE U.S. MARSHAL AT 2 P.M. MONDAY ON CONTEMPT CHARGES FOR REFUSING TO ANSWER QUESTIONS BEFORE A GRAND JURY ABOUT THE "LEAK" OF SECRET DOCUMENTS ABOUT THE VIETNAM WAR.

ACCORDING TO CAMPBELL, THERE IS A STANDING COURT ORDER BARRING DEMONSTRATIONS ON FEDERAL PROPERTY. HE SAID THE ORDER WOULD BE ENFORCED AND ANYONE VIOLATING IT WOULD GO TO JAIL.

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Ellsberg to keynote National Student Congress

Dr. Daniel Ellsberg, former Pentagon Aide charged with the release of The Pentagon Papers, will be the keynote speaker at the 24th National Student Congress scheduled for Aug. 19-29 at Colorado State University.



for the following year, full day "teach-ins," election of national officers, and workshops on such topics as student legal rights, sexism, ecology, student power, racism, voter re-

gistration, and educational reform.

The National Student Association Congress is the largest annual gathering of student government representatives.

The 1,000 student government leaders, delegates representing over 400 schools thruout the country, will also hear three presidential hopefuls, Sen. Birch Bayh (D-Ind.), Sen. George McGovern (D-S.D.) and Rep. Paul McCloskey (R-Cal.). Anti-war activist Dr. Benjamin Spock, Chicago 8 defendant David Dellinger, and George Wiley, executive director of the National Welfare Rights Organi-

zation, are also scheduled to speak.

Delegates will also participate in both regional and national legislative sessions which determine NSA policy

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UPI-71

(ELLSBERG)

NEW YORK--DR. DANIEL ELLSBERG, WHO HAS BEEN INDICTED BY A
 FEDERAL GRAND JURY IN LOS ANGELES FOR RELEASING THE SECRET PENTAGON
 PAPERS TO THE PRESS, WILL DELIVER THE INAUGURAL LECTURE AT THE NEW
 SCHOOL FOR SOCIAL RESEARCH AT THE OPENING OF THE NEXT ACADEMIC YEAR.
 THE NEW SCHOOL, WHICH MADE THE ANNOUNCEMENT TUESDAY, SAID
 ELLSBERG WILL SPEAK ON "THE MAKING OF AMERICAN FOREIGN POLICY" AT
 THE SCHOOL'S AUDITORIUM SEPT. 13.
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Russo Loses Appeal, Surrenders, Is Jailed

By a Washington Post Staff Writer

LOS ANGELES, Aug. 16 — Anthony J. Russo Jr., a former research analyst with Rand Corp. and colleague of Daniel Ellsberg, surrendered himself to a U.S. marshal and was jailed here yesterday on a contempt of court citation for refusing to testify before a Federal grand jury investigating the Pentagon Papers case.

Russo's surrender came after Supreme Court Justice

William O. Douglas declined to bar the jailing. That appeal was based on Russo's contention that an individual cannot be forced to testify before a grand jury until it is determined whether "unlawful" electronic surveillance had led to his being summoned.

Justice Douglas, ruling said "there does not seem to be any credible evidence" that the government violated any law by using wiretap surveillance against Russo. "There must be some credible evidence . . . before ponderous judicial machinery is invoked to delay grand jury proceedings," Justice Douglas added.

The 34-year-old Russo was called to the grand jury in mid-June to tell what he knew about the copying and leaking of the Pentagon documents. Russo refused to testify and continued to refuse after he was granted immunity. He was then cited for contempt, but imprisonment was delayed by a series of appeals.

The Washington Post Times Herald A-11
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 The Wall Street Journal _____
 The National Observer _____
 People's World _____

Date **AUG 17 1971**

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46 AUG 19 1971

67 AUG 20 1971

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What's News—

World-Wide

Justice Douglas declined to stop the jailing of Anthony J. Russo, a research analyst who refused to testify before a Los Angeles grand jury about the Pentagon Papers leak. The Supreme Court Justice said there doesn't seem to be any credible evidence that any wiretapping was used against Russo. The former Rand Corp. analyst declined to answer questions before the same grand jury that indicted Daniel Ellsberg on charges of illegal possession and use of government documents. Ellsberg pleaded innocent at his arraignment yesterday in Los Angeles.

BUSING ORDERS issued by U.S. courts must be followed, a federal judge declared.

Judge Sam C. Pointer told the Jefferson County (Birmingham) School Board to ignore any antibusing orders from Alabama Gov. George C. Wallace if his orders conflict with those handed down by the courts. Last week Wallace, saying he was invoking his police powers as governor, told the Jefferson County board to ignore federal court orders and reassign a pupil to a school closer to her home. She was scheduled to be bused to a school about 20 miles from her residence, Wallace said.

Pointer said Wallace's order was merely "an exercise of free speech . . . and he is entitled to it as much as anybody." But, Pointer emphasized, the board must obey federal desegregation orders.

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Date **AUG 17 1971**

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Ellsberg Denies Guilt, Will Fight

By STEVEN V. ROBERTS

Special to The New York Times

LOS ANGELES, Aug. 16—Dr. Daniel Ellsberg pleaded not guilty today to charges that he had illegally possessed and copied the controversial Pentagon papers.

Dr. Ellsberg, a former Defense Department official, has declared that he gave the secret study of the United States involvement in Vietnam to the news media. He indicated today that his defense would rest on the importance of the papers and on the public's right to know what they contain.

Thus Dr. Ellsberg intends to present a "political defense" that would go beyond the specific crimes mentioned in the indictment and would include discussions of the entire Vietnam war. Defendants in several other trials have tried this tactic, but most judges have ruled as irrelevant arguments about the legality and morality of the war.

'The Public Agrees'

"Obviously, my motive for whatever I've done closely depends on a reading of the papers," Dr. Ellsberg said to reporters on the sidewalk outside court. According to his reading, he added, the papers reveal "high crimes by officials of our government."

The wide publication of the papers, Dr. Ellsberg said, means that "the public agrees with me that they have a right to know."

In another development, Anthony J. Russo surrendered to Federal authorities and began serving a jail sentence on contempt charges stemming from his refusal to testify before the grand jury that indicted Dr. Ellsberg last month.

Mr. Russo, a former colleague of Dr. Ellsberg's at the Rand Corporation, had won several stays of his sentence but the latest ran out today and the Supreme Court declined to renew it. He will remain in jail until he decides to testify or until the grand jury ceases sitting, which could be more than a year from now.

Dr. Ellsberg, now a research fellow at the Massachusetts Institute of Technology, was arraigned on the two-count indictment this morning before United States Magistrate Ralph J. Geffen. He was accompanied by his two lawyers Leonard Boudin of New York and Prof. Charles Nesson of Harvard Law School. The indictment was issued here because Dr. Ellsberg had access to the Pentagon papers while he was employed at the Rand Corporation in nearby Santa Monica.

A Judge Is Chosen

After advising Dr. Ellsberg of his constitutional rights, Mr. Geffen reached into a wooden cylinder and selected at random the name of a judge for the case in Federal District Court here. The judge chosen was William Matthew Byrne Jr., a former United States Attorney in Los Angeles and the staff director of the Scranton Commission on Campus Unrest.

Judge Byrne, a Democrat, was nominated for the bench in the waning days of the Johnson Administration, but his name was withdrawn by President Nixon. After Senator John V. Tunney defeated former Senator George Murphy last year, giving California two Democratic Senators, the President agreed to reintroduce Judge Byrne's name. He is thus the most junior judge in this district.

This afternoon, Judge Byrne accepted Dr. Ellsberg's plea of not guilty and scheduled pre-trial motions for Jan. 4, 1972. The case is not expected to come to trial before next spring.

Lawyers here considered that the selection of Judge Byrne favored the defense, since a judge who might be receptive could make a considerable difference in a long and well-publicized trial.

At his sidewalk news conference, Dr. Ellsberg said he was looking forward to the trial. "I think it will be very instructive for the people of this country," he said. "The issues that are going to be raised are issues of great concern. I think it will be a very good process."

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Asked if the issues were more important than the jury's verdict, Dr. Ellsberg replied: "They are issues of life and death, war and peace. They're incomparably more important than what happens to me."

Dr. Ellsberg retains his zeal on the subject of Vietnam. In response to one question, he noted that the United States had dropped more explosives on Indochina in the last two years than it had in all the theaters of World War II. Then he looked sharply at the reporters and said: "Did you know that?"

The possibility remained that the charges against Dr. Ells-

berg would be superseded by a new indictment. The grand jury that indicted him last month is still meeting and calling witnesses. Those subpoenaed include Stephen Marx, brother of Dr. Ellsberg's wife.

A new indictment could expand the charges against Dr. Ellsberg. Reliable sources indicate that the grand jury is considering a possible conspiracy charge. If that happens, others are likely to be indicted along with Dr. Ellsberg.

Meanwhile, another grand jury, in Boston, has subpoenaed two witnesses to appear later this week. That grand jury, which has reportedly focused on how the Pentagon papers were actually published by The New York Times, The Washington Post and other newspapers, could also issue a superseding indictment. In that case, the Ellsberg trial could well be held in Boston rather than Los Angeles.

The two witnesses were later identified as Prof. Richard Falk, of Princeton University, and Samuel Popkin, who was associated with the Center for International Affairs at Harvard University. Both men have been identified prominently with the antiwar movement.

To Pick Judge in Ellsberg Case

Los Angeles, Aug. 15 (UPI)—Daniel Ellsberg, who believes the Vietnam war is immoral, is due to make two appearances before federal authorities tomorrow on an indictment charging unauthorized possession and use of the Pentagon papers.

The 40-year-old former government economist, free in \$50,000 bail, must appear before U.S. Magistrate Ralph J. Geffen, at which time a drawing by lot will be made to determine which federal district judge will be assigned to his case.

Ellsberg also is to appear later before the selected judge and have the indictment read to him.

Employed by Rand

The offenses in the grand jury indictment are alleged to have taken place when Ellsberg was employed by the Rand Corp. a think tank, last fall. The corporation is based at nearby Santa Monica.

The indictment specifies that Ellsberg had "unauthorized possession of, access to, and control over copies of certain documents and writings relating to the national defense . . ."

A second count charges that Ellsberg did "willfully, knowingly and unlawfully convert to his own use copies of certain documents and writings"—copies of a study titled "United States-Vietnam Relations, 1945-1967."

Ellsberg left Rand late last year and took a post as senior research associate at Massachusetts Institute of Technology's Center for International Studies.

Before joining Rand, he worked in the Defense Department's international security division.

Penalty on conviction of the offenses alleged in the indictment is a maximum of 10 years in a federal penitentiary.

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46 AUG 20 1971

Date AUG 16 1971

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(Mount Clipping in Space Below)

Ellsberg grand jury fails to get Denverites to reply

By ALAN CUNNINGHAM
Rocky Mountain News Writer

Two Denver pacifists refused to answer the questions of a federal grand jury in Los Angeles Tuesday.

Burt Wallrich, 34, and Miss Anne Guilfoile, 29, associates at the Institute for the Study of Non-Violence, were dismissed by the jury after they declined, in Wallrich's words, "to answer any questions of substance."

Wallrich said the two of them were among three people subpoenaed to testify before the jury, apparently in a continuation of its probe into the antiwar activities of Daniel Ellsberg, who has admitted giving secret Pentagon papers to the New York Times.

Ellsberg has been indicted by the same grand jury for making the documents public.

Among the 15 to 20 questions which Wallrich said he and his associate each refused to answer Tuesday were several dealing with whether they could name the daily newspapers in Denver and whether Wallrich had corresponded with the Rocky Mountain News.

July 6 editions of the News

Such questions apparently related to an article in July 6 editions of the News which described the two Denverites' acquaintance with Ellsberg. The article was based in part on letters written to a reporter by Wallrich while he and Miss Guilfoile were serving jail terms for their antiwar activities last spring.

With Miss Guilfoile and Wallrich in Los Angeles Tuesday was Denver attorney Rudolph Schwere. In a telephone interview, Wallrich said Schwere was part of a small army of legal counselors—it included three Los Angeles lawyers, a legal worker and a UCLA law student—who counseled them on what and what not to say.

After being dismissed by the jury, Wallrich released a lengthy statement in which he accused the grand jury of taking part in a judicial fishing expedition designed to find virtually everyone involved in the peace movement guilty of one crime or another.

"The federal government is convinced," his statement said, "that the entire peace movement in the U.S. is guilty. Guilty not of the breaking of some specific law, but guilty of dissenting."

Wallrich went on to say that, under current grand jury procedures, the concept of "innocent until proven guilty" had been supplanted by one of "guilty until proven guilty."

58 AUG 19 1971 "has already decided that the peace movement is guilty of wrong beliefs. It is now engaged in the search for a punishable act."

Must be subject to jeopardy

Asked if this meant he felt the grand jury was preparing to indict him as well as Ellsberg, Wallrich said he feared that anyone who was called to testify in the case might be subject to such jeopardy.

Wallrich said he was told the jury met only once weekly and had only returned to the Ellsberg case this week after looking into other, unrelated matters in recent sessions. He said it

was impossible to say whether jurors would continue to call witnesses relating to Ellsberg in coming weeks or would once again turn to other topics.

Grand juries meet in secret and details of their deliberations aren't made public unless they issue closing reports or return indictments.

Wallrich said he knew the identity of the third individual who testified Tuesday, but he declined to say who it was.

He said Ellsberg is scheduled to appear at a press conference in Los Angeles Wednesday, called to mark the start of a jail term for Tony Russo, a former Ellsberg associate in the Rand Corp. Russo has been cited for contempt of court as a result of his earlier refusal to testify before the grand jury.

Wallrich also said he and Miss Guilfoile plan to return to Denver in time to take part in the Hiroshima memorial peace march and rally, scheduled to make its way to the State Capitol steps Friday. Wallrich will speak to the crowd about his grand jury experience.

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8 ROCKY MOUNTAIN NEWS
—DENVER, COLORADO

Date: AUGUST 4, 1971
Edition: HOME FINAL
Author: ALAN CUNNINGHAM
Editor: VINCENT M. DWYER
Title: DANIEL ELLSBERG

Character: ESPINOAGE-X

or

Classification: 105-4507

Submitting Office: DENVER

☐ Being Investigated

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UPI-56

(ELLSBERG)

BOSTON--LAWYERS FOR DANIEL ELLSBERG FILE A BRIEF WITH A FEDERAL MAGISTRATE TODAY, DETAILING THEIR CONTENTION THAT BECAUSE OF ILLEGALLY OBTAINED WIRETAP EVIDENCE ELLSBERG SHOULD NOT STAND TRIAL FOR LEAKING THE PENTAGON PAPERS.

AN ASSISTANT TO MAGISTRATE PETER A. PRINCI SAID A RULING WOULD BE ISSUED "SOMETIME NEXT WEEK, PROBABLY IN THE MIDDLE OF THE WEEK."

IF PRINCI RULES IN FAVOR OF ELLSBERG, A HEARING WOULD BE HELD BEFORE THE MAGISTRATE TO DETERMINE WHETHER ANY WIRETAP EVIDENCE WAS OBTAINED "IN VIOLATION OF THE DEFENDANT'S RIGHT TO PRIVACY."

IF PRINCI RULES AGAINST ELLSBERG, THE FORMER PENTAGON AND STATE DEPARTMENT AIDE WOULD BE ORDERED TO CALIFORNIA TO STAND TRIAL ON CHARGES OF UNAUTHORIZED POSSESSION AND DISTRIBUTION OF THE 47-VOLUME STUDY OF THE VIETNAM WAR.

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WASHINGTON CAPITAL NEWS SERVICE

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65-74060-Sub A

FOR DEPARTMENT OF DEFENSE

REC-117

PROGRAM The Today Show

STATION WRC TV
NBC Network

DATE July 16, 1971 7:00 AM

CITY Washington, D. C.

AN INTERVIEW WITH NEIL SHEEHAN

EDWIN NEWMAN: On Sunday, June 13th the New York Times began publication of a series of articles based on the secret Pentagon history of the United States' involvement in Indochina. And the man who obtained the Pentagon papers for the Times is Neil Sheehan whose background includes war reporting in Vietnam, and whose current assignment is to be in the Washington Bureau of the New York Times.

Mr. Sheehan, before we go into the significance of the papers, what happened when you got them? What happened at the time?

NEIL SHEEHAN: Well, I can't talk about how the Times got them or when we got them. But essentially what happened after we obtained the papers was I spoke to my editors about it, and we had long and lengthy discussions about it. And they made a very quick decision to publish.

NEWMAN: Very quick?

SHEEHAN: By the editors.

NEWMAN: How quick?

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SHEEHAN: As far as the editors were concerned, it was almost instantaneous. There wasn't a question of choice. I don't know the details of the decision-making process above at the Times because I wasn't privy to it.

NEWMAN: What happened then? You went to the hotel, didn't you?

SHEEHAN: Well, we worked when we were finally writing in the New York Hilton [sic] and stayed there for some time working on the papers. And it's since then said that we were sort of there in secret. Actually we weren't. The hotel knew that the New York Times had booked some rooms.

NEWMAN: Was the room booked in your name?

SHEEHAN: It wasn't booked in my name; it was booked in the name of the Times. And the bills actually were signed by -- were accounted to one of the editors who was in immediate charge of the project, Gerald Gold. It got rather amusing because we were all signing his name on all the breakfast checks for accounting purposes more than secrecy. But the hotel staff began to wonder who this Mr. Gold was who ate ten breakfasts or something every morning.

NEWMAN: Was there any trouble keeping the secret at the Times itself?

SHEEHAN: Not really that I can gather. There was one article in The Village Voice that the Times was working on Southeast Asia. Other than

that, within the Times itself people were very good about it, very gracious about it.

NEWMAN: Yesterday on this program, Mr. Sheehan, Kenneth O'Donnell, who used to be an aide to President Kennedy and then to President Johnson, said that the Pentagon papers distorted the 1964 election campaign by suggesting that Mr. Johnson was telling the American public one thing while he was secretly planning to escalate the war and to bomb North Vietnam.

He says that that was a distortion, that that was the impression the papers give. Is that the impression the papers give, and is it a distortion?

SHEEHAN: Well, I wouldn't say there's a distortion involved. Certainly the papers give you an impression that an awful lot was going on inside the government the electorate, in general, was not privy to. And when one says the papers give you that impression, the value of these papers is that they are the memoranda, the cables and the messages written at the time. And really what you can do with them is to compare the internal decision-making record inside the government with the public record. And you begin to see that at the time, according to the documentary record, there was considerable discrepancy between what was being said in public and what was actually being planned within the executive branch itself.

Now, the question would be how do you explain that

There's something historians

have got to explain.

NEWMAN: But you're satisfied that there was a discrepancy?

SHEEHAN: As far as the papers show, they certainly show a discrepancy.

NEWMAN: Do they show an intentional discrepancy?

SHEEHAN: That's the question really the historian has got to settle: what was in the President's mind in his public statements at that time. Certainly the public statements do not give a very full account of what was going on in private. There's a definite discrepancy there.

NEWMAN: One of the things often said about the Pentagon papers is that they're really contingency plans. You hear that over and over again. These are merely contingency plans. All governments have contingency plans. And that the Times has given the impression, you've given the impression, that they were more than that; that they were fully fixed ideas in the minds of those who were directing our government at the relevant times.

How do you reply to that?

SHEEHAN: Well, it's a misnomer, really, to call these documents contingency plans; that is, the important documents in the collection. The word really doesn't apply. These were not contingency plans. First of all, they were recommendations. And they were recommendations -- the important documents --

There were recommendations to bomb

And the bombing began within a relatively short period of time.

So I think one has to draw a rather sharp distinction there and point out that really a contingency plan is something which is drawn up for a situation that no one really foresees may absolutely occur. It's a plan if something will occur.

Now, these documents show considerable planning with the intention, with the full intent, that the plans might have to be carried out.

Let me give you an example. On August 18th, 1964 General Taylor, then the Ambassador to Saigon, recommends two courses of action to the President and to the rest of the administration in Washington. This is now a little over a week after the passage of the Tonkin Gulf Resolution. Both of these courses of action are to bomb North Vietnam. On November 1st, the President appointed a working group under Bill Bundy to study the alternatives in Vietnam. The three alternatives the group came up with -- and it held its first meeting on November 3rd, the morning of the election -- were all to bomb North Vietnam.

So when you look at this record you realize that we're not dealing with contingency plans. They were dealing with recommendations made with the full knowledge that they might very well be carried out within a reasonably short period of time.

NEWMAN: You have written that one thing the Pentagon

ing on the part of those who made our policy. And that seems to you to be important.

SHEEHAN: Yes, it's one of the curious things about these papers. There's a marked absence of dealing with equity, with those aspects of the war. You just don't see it. It's the language of problem solving. It's a dry, sort of sparse language.

NEWMAN: A short time ago in an interview with Dean Rusk, he said that that is simply the way government papers are written; it's a kind of government shorthand. You just don't do that kind of thing.

SHEEHAN: Well, you do find it in one instance. Really two instances, but on one occasions -- in May of 1967 when John McNaughton, the late John McNaughton, the former Assistant Secretary of Defense for International Security Affairs, and Mr. McNamara had become very deeply disillusioned over the war. Then you find in a letter from Mr. McNaughton to Mr. McNamara and in a memorandum they both drafted for the President moral and emotional questioning about the war.

I suspect the absence of it has got something to do with our culture and the way we view the role, or the way the government official views his role. Certainly the impression that you get in public is that an awful lot of anguishing is going on within the government. I'm sure it is. You just don't see it in the documentary record there. And it's

striking in its absence.

NEWMAN: Thank you, Mr. Sheehan.

Neil Sheehan, the man who obtained the Pentagon papers for the New York Times and set in train a considerable number of events.

Thank you.

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101-111

(DOCUMENTS)

WASHINGTON--WHITE HOUSE AIDES SAID TODAY PRESIDENT NIXON HAS OFFERED AN ACCELERATION IN THE DECLASSIFICATION OF SECRET DOCUMENTS RELATING TO EVENTS OF HISTORICAL IMPORTANCE.

PRESIDENTIAL ASSISTANT JOHN D. ERRLICHMAN SAID NIXON SPECIFICALLY WANTED TO LIFT THE SECRECY SURROUNDING THE KOREAN WAR, THE 1950 CHINA CRISIS AND JOHN F. KENNEDY'S HANDLING OF THE CUBAN CRISIS. HE SAID OTHER EVENTS OF HISTORICAL IMPORTANCE WOULD LATER BE ADDED TO THE LIST.

ERRLICHMAN MADE THE DISCLOSURES IN REVIEWING THE PROGRESS OF SECRET DOCUMENTS NOW UNDER WAY OF THE CLASSIFICATION AND HANDLING OF SECRET DOCUMENTS. HE SAID THE PRESIDENT WANTED TO LESSEN THE NUMBER OF GOVERNMENT PAPERS STAMPED SECRET, BUT FELT IT EXTREMELY IMPORTANT TO TIGHTEN REGULATIONS GOVERNING THE DISTRIBUTION OF THOSE WHICH ARE CLASSIFIED SECRET.

"THE PRESIDENT IS SEEKING AN ERA OF NEGOTIATION RATHER THAN CONFRONTATION AND ONE OF THE THINGS ESSENTIAL TO SUCCESSFUL NEGOTIATIONS IS CONFIDENTIALITY," ERRLICHMAN SAID, POINTING OUT THAT THE GOVERNMENT'S HAD QUESTIONED THE U.S. GOVERNMENT'S ABILITY TO KEEP A SECRET FOLLOWING THE DISCLOSURE OF THE SECRET.

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WASHINGTON CAPITAL NEWS SERVICE

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HE SAID THE PRESIDENT "STRONGLY BELIEVES THE GOVERNMENT SHOULD ADOPT A SYSTEM OF CLASSIFICATION ... TO INSURE CONFIDENTIALITY TO THE MAXIMUM EXTENT POSSIBLE," IN DELICATE NEGOTIATIONS.

ENRICHMAN SAID HE EXPECTED NIXON WOULD SHORTLY ASK CONGRESS TO EXPAND THE FIVE YEAR, \$6 MILLION PROGRAM HE PROPOSED AUG. 3 FOR BEGINNING A SYSTEMATIC DECLASSIFICATION PROGRAM. THAT EFFORT WOULD CONCENTRATE ON 150 MILLION PAGES OF SECRET WORLD WAR II DOCUMENTS, AN INDICATION OF THE SCOPE OF THE PROBLEM IS THAT 300 MILLION PAGES MUST BE EXAMINED TO DECLASSIFY DOCUMENTS IN THE 1946-54 PERIOD.

AN INTERDEPARTMENTAL STUDY GROUP HEADED BY ASSISTANT ATTORNEY GENERAL WILLIAM H. REHNQUIST HAS BEEN AT WORK SINCE JANUARY REVIEWING CLASSIFICATION PROCEDURES AND IS EXPECTED TO MAKE ITS RECOMMENDATIONS WITHIN A FEW MONTHS.

ENRICHMAN SAID THE REHNQUIST STUDY HAS FOUND THAT TOO MANY PERSONNEL HAVE IN THE PAST HAD THE LEGAL AUTHORITY TO IMPOSE CLASSIFICATION AND THAT THE BURDEN OF THE PROOF HAD BEEN ON THOSE WISHING DECLASSIFICATION.

HE SAID THE PRESIDENT HOPED TO AUTOMATICALLY DECLASSIFY DOCUMENTS AFTER A CERTAIN PERIOD OF TIME UNLESS IT WERE PROVED THAT THE DOCUMENTS SHOULD REMAIN CLASSIFIED.

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ELLSBERG 8-13 NX

NEW ORLEANS (UPI)--DANIEL ELLSBERG TOLD THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE ITS FOUNDER, DR. MARTIN LUTHER KING JR., INSPIRED HIM TO VIOLATE "AN IMMORAL LAW REGULATING AN IMMORAL WAR."

KING'S EXAMPLE OF "PUTTING YOUR BODY ON THE LINE AND SPEAKING TO THE CONSCIENCE OF YOUR FELLOW AMERICANS," ELLSBERG SAID, INSPIRED HIM TO MAKE THE PENTAGON PAPERS PUBLIC.

ELLSBERG AND FORMER SEN. EUGENE MCCARTHY, D-MINN., HEADED A LIST OF SPEAKERS AT AN SCLC RALLY THURSDAY NIGHT.

ELLSBERG IS ON HIS WAY TO LOS ANGELES TO BE ARRAIGNED ON FEDERAL CHARGES HE VIOLATED THE SECRECY OF CLASSIFIED DOCUMENTS.

"I HOPE THAT THE COURT AND JURY WILL FIND THAT I HAVEN'T VIOLATED ANY LAW AND THAT I WON'T HAVE TO GO TO PRISON. BUT IF THEY DON'T FIND THAT WAY, I'LL GO TO PRISON," HE SAID. *way*

"I HAVE DECIDED IF I HAVE TO GO TO PRISON I'LL BE IN GOOD COMPANY AND I'LL BE PROUD TO GO. GREATER MEN THAN I, INCLUDING MARTIN LUTHER KING AND THE BERRIGAN BROTHERS HAVE GONE TO PRISON OVER THE SAME THINGS."

ELLSBERG SAID HE DIDN'T THINK HE WAS BEING PERSECUTED BY THE GOVERNMENT, BUT ADDED, "I HOPE I'M GIVING THE EXECUTIVE BRANCH OF THE GOVERNMENT SOME TROUBLE IN PROSECUTING THIS WAR."

MCCARTHY, DISPLAYING THE VIGOR OF HIS EARLY, 1968 CAMPAIGN TOURS IN HIS QUEST FOR THE DEMOCRATIC PRESIDENTIAL NOMINATION, CALLED FOR A RECOMMITMENT IN THE 1970'S TO WHAT HE CALLED "A NEW SET OF CIVIL RIGHTS."

HE SAID THE NEW CIVIL RIGHTS SHOULD INCLUDE THE RIGHT TO A DECENT JOB, REASONABLY PRICED MEDICAL CARE, STANDARD HOUSING AND THE RIGHT TO BE FREE FROM POVERTY.

"THE GREAT PRIVILEGED CORPORATIONS AND LABOR UNIONS MUST CARRY THEIR LOADS. THEY MUST GIVE THE POOR AND MINORITY GROUPS DECENT JOBS," SAID MCCARTHY, WHO HAS BEEN MENTIONED AS A POSSIBLE THIRD PARTY CANDIDATE IN 1972.

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WASHINGTON 170 CAPITAL SERVICE

59 AUG 18 1971

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ELLSBERG 8-11 NX
 BOSTON (UPI)--DR. DANIEL ELLSBERG'S APPEARANCE BEFORE A U.S. MAGISTRATE IN BOSTON WAS SIMPLY TO DETERMINE IF HE WAS THE MAN ACCUSED OF LEAKING THE SECRET PENTAGON PAPERS TO NEWSMEN, THE U.S. COURT OF APPEALS HAS RULED.

TUESDAY'S RULING REJECTED DEFENSE CONTENTIONS THAT ILLEGAL WIRETAPPING INVALIDATED THE ARREST WARRANT. UNLESS A DEFENSE APPEAL TO THE U.S. SUPREME COURT IS UPHELD, ELLSBERG MUST BE IN CALIFORNIA AUG. 16 TO ANSWER AN INDICTMENT CHARGING HIM WITH POSSESSING CLASSIFIED DOCUMENTS AND GIVING THEM TO UNAUTHORIZED PERSONS.

THE COURT SAID THE PROPER PLACE TO RAISE THE ISSUE OF WIRETAPPING WOULD BE IN LOS ANGELES, WHERE A FEDERAL GRAND JURY ISSUED THE INDICTMENT.

IN AN OPINION WRITTEN BY JUDGE FRANK M. COFFIN WITH JUDGE BAILEY ALDRICH CONCURRING, THE 1ST CIRCUIT COURT OF APPEALS SAID THE ONLY RELEVANT ISSUE REGARDING ELLSBERG'S REMOVAL TO LOS ANGELES WAS WHETHER HE WAS THE MAN NAMED IN THE INDICTMENT.

"SINCE DEFENDANT ADMITTED HIS IDENTITY, THE REMOVAL COURT HAD NO CHOICE BUT TO ISSUE THE REMOVAL ORDER ON PRESENTATION OF A CERTIFIED COPY OF THE INDICTMENT AND A COPY OF THE ARREST WARRANT," THE COURT SAID.

ELLSBERG'S LAWYERS WANTED U.S. DISTRICT COURT JUDGE W. ARTHUR GARRITY JR., OF BOSTON, TO HOLD THE HEARING. LAST THURSDAY GARRITY RULED THE WIRETAPPING ISSUE WAS IRRELEVANT TO THE REMOVAL PROCEEDINGS AND ORDERED ELLSBERG TO APPEAR IN LOS ANGELES FOR ARRAIGNMENT NEXT MONDAY.

ELLSBERG'S LAWYERS, LED BY LEONARD B. BOUDIN, APPEALED THAT RULING BUT PROMISED ELLSBERG WOULD APPEAR FOR THE ARRAIGNMENT. COFFIN HEARD ARGUMENTS LAST FRIDAY IN PORTLAND, MAINE, WHERE HE IS SPENDING HIS SUMMER VACATION.

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WASHINGTON CAPITAL NEWS SERVICE

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W. J. [unclear]

UPI-115

(ELLSBERG)

BOSTON--THE U.S. COURT OF APPEALS TODAY DENIED A PETITION TO COMPEL A FEDERAL JUDGE IN BOSTON TO HOLD A HEARING ON WHETHER ILLEGAL WIRETAPPING WAS USED TO PRODUCE THE INDICTMENT AGAINST DR. DANIEL ELLSBERG FOR ILLEGAL POSSESSION AND DISTRIBUTION OF THE TOP SECRET PENTAGON PAPERS.

THE COURT RULED THAT, IN EFFECT, THE PROPER PLACE TO RAISE THE ISSUE OF WIRETAPPING WAS IN LOS ANGELES, WHERE A FEDERAL GRAND JURY RETURNED THE INDICTMENT.

IN AN OPINION WRITTEN BY JUDGE FRANK M. COFFIN, WITH JUDGE BAILEY ALDRICH CONCURRING, THE 1ST CIRCUIT COURT OF APPEALS SAID THE ONLY RELEVANT ISSUE REGARDING ELLSBERG'S REMOVAL TO LOS ANGELES WAS WHETHER HE WAS THE MAN NAMED IN THE INDICTMENT.

"SINCE DEFENDANT ADMITTED HIS IDENTITY, THE REMOVAL COURT HAD NO CHOICE BUT TO ISSUE THE REMOVAL ORDER ON PRESENTATION OF A CERTIFIED COPY OF THE INDICTMENT AND A COPY OF THE ARREST WARRANT," THE COURT SAID.

ELLSBERG'S LAWYERS WANTED U.S. DISTRICT COURT JUDGE W. ARTHUR GARRITY JR., OF BOSTON TO HOLD THE HEARING. LAST THURSDAY GARRITY RULED THE WIRETAPPING ISSUE WAS IRRELEVANT TO THE REMOVAL PROCEEDINGS AND ORDERED ELLSBERG TO APPEAR IN LOS ANGELES FOR ARRAIGNMENT NEXT MONDAY.

ELLSBERG'S LAWYERS, LED BY LEONARD B. BOUDIN, APPEALED THAT RULING BUT PROMISED ELLSBERG WOULD APPEAR FOR THE ARRAIGNMENT. COFFIN HEARD ARGUMENTS LAST FRIDAY IN PORTLAND, MAINE, WHERE HE IS SPENDING HIS SUMMER VACATION.

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File 5-984

59AUG18 1971

WASHINGTON CAPITAL NEWS SERVICE

Ellsberg to plead innocent

LOS ANGELES (UPI)— Daniel Ellsberg, who was expected to be arraigned here today on charges he broke federal laws when he leaked the Pentagon papers will admit slipping the classified documents to newspapers but deny it was a criminal security breach.

He was scheduled to appear first before U.S. magistrate Ralph Geffen, who was to conduct a drawing by lot to select a U.S. district judge to hear Mr. Ellsberg's case. The judge was then expected to conduct the arraignment later in the day, reading the indictment against Mr. Ellsberg and giving him a chance to plead guilty or innocent.

When he was arrested, and in public appearances since then, Mr. Ellsberg admitted giving the classified study of the Origins of the Vietnam War commissioned by the Pentagon. He

had access to it as a researcher for Rand Corp.

"All these actions were clearly in contradiction to security regulations," he said at the time. "Nevertheless, I felt as an American citizen, a responsible American citizen, I could no longer cooperate in concealing this information from the American public.

"I did this clearly at my own jeopardy. I am prepared to answer to all the consequences of these decisions . . . wouldn't you go to prison to help end the war?"

If convicted, he could be sentenced to up to 10 years in prison and a \$10,000 fine. He is specifically charged with two offenses — "unauthorized possession" and "converting to his own use" what the indictment described as "executive branch documents classified top secret."

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The Wall Street Journal _____
The National Observer _____
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W. J. Brennan
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W. J. Brennan

UPI-39

(ELLSBERG)

PORTLAND, MAINE --A FEDERAL APPEALS COURT TODAY WAS CONSIDERING A PETITION BY DR. DANIEL ELLSBERG TO FORCE A HEARING ON WHETHER THE GOVERNMENT USED ILLEGAL WIRETAPPING TO INDICT HIM FOR ILLEGAL POSSESSION AND DISTRIBUTION OF THE PENTAGON STUDY ON THE VIETNAM WAR.

LAWYERS FOR ELLSBERG, LED BY LEONARD BOUDIN, ARGUED FOR THE PETITION FRIDAY IN THE CHAMBERS OF JUDGE FRANK M. COFFIN. THE JUDGE SAID HE ALONE COULD NOT LEGALLY RULE ON THE PETITION AND MUST BRING THE MATTER BEFORE THE OTHER TWO JUDGES OF THE 1ST CIRCUIT COURT OF APPEALS.

"WE WILL ACT AS SOON AS WE CAN," COFFIN SAID.

THE PETITION SEEKS TO REQUIRE U.S. DISTRICT JUDGE W. ARTHUR GARITY JR. TO DELAY HIS ORDER THAT ELLSBERG GO TO LOS ANGELES AUG. 16 TO BE ARRAIGNED ON THE FEDERAL INDICTMENT RETURNED THERE. BEFORE ELLSBERG IS REQUIRED TO LEAVE HIS HOME IN CAMBRIDGE, MASS., BOUDIN SAID, THE HEARING SHOULD BE HELD.

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59 AUG 13 1971

WASHINGTON CAPITAL NEWS SERVICE

Nixon Feared War File Leak Would Hurt Secret China Talk

By Don Oberdorfer
Washington Post Staff Writer

President Nixon has told recent visitors that the publication of the Pentagon papers seemed for a time to jeopardize Henry A. Kissinger's secret negotiation with China.

Mr. Nixon left the impression with some callers that the Chinese had expressed concern that the United States government was unable to keep secrets—and thus that negotiations with Americans might be unwise.

White House officials familiar with the situation, however, say there was no such indication of concern from the Chinese. According to these

sources, the worry was real—but it existed in the minds of Washington officials, without any confirmation from Peking.

Mr. Nixon discussed the potential impact of the Pentagon papers on the China trip in justifying his decision to go to court against The New York Times and The Washington Post to halt publication of the disclosures.

The President reportedly was buffeted by pressures from various sides in deciding what stance to take: If he took no action to stop publication, he might have been accused of seeking political advantage by permitting embarrassing revelations about the Democratic administrations of Presidents John F. Kennedy and Lyndon B. Johnson. And if he took action, he was likely to be accused of a vendetta against critics in the press.

The international implications of the disclosures—including the potential impact of the secrecy breach on the Kissinger trip to China—played an important part in action against the newspapers, Mr. Nixon reportedly said.

The President has made clear on several recent occasions his view that secrecy is imperative in the successful pursuit of diplomatic negotiations with the Communist powers and particularly with the Chinese. So far the administration has revealed little or nothing of substance about the talks between Chinese Premier Chou En-lai and presidential assistant Kissinger.

In another development related to the Pentagon papers, Sen. John C. Stennis (D-Miss.) asked the Senate yesterday to underwrite "an impartial, non-partisan historical account" of the United States involvement in the Vietnam war.

Stennis, who is chairman of the Senate Armed Services Committee, said his proposal was prompted by the publication of stories based on the Pentagon's secret history of the war and the resulting public demand for "a full, careful and dispassionate analysis of what actually transpired."

"The longer we continue to deal with the origins of the Vietnam war in an atmosphere of anger, recrimination and domestic politics, the deeper will be the wounds on our society. The sooner we can have an objective and disinterested account by professional researchers on the origins, the conduct and the wide-ranging effects of the Vietnam war, the sooner we will be able to begin the healing that can only come from understanding," Stennis said in a Senate speech.

Under his plan, embodied in a proposed Senate resolution, the Librarian of Congress and the Director of the

Smithsonian Institutions' National Museum of History would name a five-member Vietnam War Historical Board composed of "eminent historians" nominated by the American Historical Association, the Council on Foreign Relations and other learned groups.

The Stennis resolution calls the President to direct government agencies to make available all documents and other records concerning the war to the historians. The history would be published within five years, after being reviewed by the President for security only. Stennis proposed that up to \$250,000 from U.S. Senate funds be allotted to begin the study.



HENRY KISSINGER
... Nixon negotiator

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Review Stays Jailing of Russo

Associated Press *A-4*

Anthony J. Russo, the research analyst who refused to testify before a grand jury investigating the leak of the Pentagon papers, was granted a one-week reprieve from prison yesterday by Justice Hugo L. Black.

Russo was to surrender at 2 p.m. next Monday to a U.S. marshal. He was found in contempt for declining to testify before the federal grand jury in Los Angeles.

The Washington Post Times Herald *A-4*
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 The National Observer _____
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UPI-69

(ELLSBERG)

BOSTON --A FEDERAL JUDGE TODAY ORDERED DR. DANIEL ELLSBERG TO STAND TRIAL IN CALIFORNIA FOR RELEASING THE TOP SECRET PENTAGON STUDY INTO THE VIETNAM WAR.

U.S. DISTRICT JUDGE W. ARTHUR GARRITY JR. SET AU. 16 AS THE ARRAIGNMENT DATE FOR ELLSBERG IN LOS ANGELES. IN ORDERING ELLSBERG REMOVED TO CALIFORNIA, HE WENT ALONG WITH THE RECOMMENDATION OF U.S. MAGISTRATE PETER W. PRINCI TO DENY DEFENSE MOTIONS FOR A HEARING ON WHETHER THE GOVERNMENT USED ILLEGAL EAVESDROPPING AND WIRETAPPING TO PRODUCE EVIDENCE IN GAINING THE INDICTMENTS AGAINST ELLSBERG.

ELLSBERG REMAINED FREED ON \$50,000 BAIL AND HIS CHIEF ATTORNEY ELONARD B. BOUDIN, PROMISED ELLSBERG WOULD APPEAR FOR THE ARRAIGNMENT.

GARRITY ALSO DENIED A PETITION FOR BOUDIN TO REQUIRE PRINCI TO REQUEST THE GOVERNMENT TO SHOW IT HAD NOT USED ILLEGALLY OBTAINED EVIDENCE THROUGH WIRETAPPING OR EAVESDROPPING.

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UPI-67

(PENTAGON PAPERS)

LOS ANGELES --ANTHON RUSSO, WHO REFUSED TO REVEAL HIS CONNECTION WITH DANIEL ELLSBERG AND THE PENTAGON PAPERS, WAS SUPPOSED TO SURRENDER TO JAIL WEDNESDAY BUT INSTEAD WON A FIVE-DAY STAY ON HIS CONTEMPT SENTENCE.

RUSSO, 34, WAS ORDERED TO JAIL FOR AN INDETERMINATE TERM AFTER HE REFUSED TO ANSWER QUESTIONS BEFORE A FEDERAL GRAND JURY HERE ABOUT HIS ASSOCIATION WITH ELLSBERG, DESPITE BEING GRANTED IMMUNITY. ELLSBERG WAS INDICTED BY THE SAME JURY FOR UNAUTHORIZED POSSESSION OF VIETNAM WAR DOCUMENTS PUBLISHED IN SEVERAL NEWSPAPERS.

RUSSO TOLD A NEWS CONFERENCE ON THE STEPS OF THE FEDERAL COURTHOUSE HE WOULD APPEAL TO THE U.S. SUPREME COURT HIS CONTEMP CITATION AND WOULD CONTINUE HIS POLICY OF "NON-COOPERATION WITH THE GRAND JURY."

U.S. DISTRICT COURT JUDGE STANLEY BARNES ISSUED A STAY OF THE INDEFINITE JAIL TERM UNTIL MONDAY TO PERMIT THE FILING OF A NEW APPEAL.

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ELLSBERG 8-6 NX
 BY JOHN CUNNINGHAM

BOSTON (UPI)--DANIEL ELLSBERG WILL HAVE TO GO TO LOS ANGELES AUG. 16 TO FACE A GRAND JURY INDICTMENT CHARGING HIM WITH POSSESSING GOVERNMENT DOCUMENTS AND GIVING THEM TO UNAUTHORIZED PERSONS.

MAGISTRATE PETER W. PRINCI MADE THAT RECOMMENDATION THURSDAY AND U.S. DISTRICT JUDGE W. ARTHUR GARRITY MADE IT AN ORDER. ELLSBERG WAS ACCUSED OF GIVING SECRET PENTAGON PAPERS ON THE VIETNAM WAR TO NEWSPAPERS.

HIS ATTORNEY CONTENDED ELLSBERG SHOULD NOT HAVE TO GO TO CALIFORNIA BECAUSE THE GOVERNMENT HAD GATHERED ITS EVIDENCE ILLEGALLY AND ASKED FOR A COURT ORDER MAKING THE GOVERNMENT ADMIT IT WAS WIRETAPPING. THE GOVERNMENT REFUSED TO RELEASE ITS EVIDENCE AND PRINCI AND GARRITY AGREED.

"THIS QUESTION OF WIRETAPPING IS IRRELEVANT AND IMMATERIAL TO THESE REMOVAL PROCEEDINGS," GARRITY SAID.

ELLSBERG, 40, A RESEARCHER AT MASSACHUSETTS INSTITUTE OF TECHNOLOGY, DID NOT APPEAR AT THE COURT HEARINGS. NEWSMEN FOUND HIM AT HIS HOME TAKING DIRTY CLOTHES TO THE LAUNDRY.

ELLSBERG SAID HE WAS DISAPPOINTED THAT THE NEWSPAPERS DID NOT PUBLISH MORE OF THE PENTAGON REPORT.

WHEN HE RELEASED THE STUDY, ELLSBERG SAID, HE WANTED ALMOST THE ENTIRE 47-VOLUMES OF PAPERS MADE AVAILABLE SO "THE AMERICAN PUBLIC WOULD HAVE BEEN ABLE TO CONSIDER THEM, EXAMINE THEM AND FORM THEIR OWN OPINIONS ON ISSUES OF WAR AND PEACE AND ON THE ISSUE OF HOW THEY ARE SERVED BY THE EXECUTIVE OF THEIR GOVERNMENT."

"THE NEW YORK TIMES AND THE WASHINGTON POST HAVE MOST OF THE PAPERS, BUT THE PUBLIC DOESN'T HAVE THEM," HE SAID.

"I HAVE TO SAY THAT MEANS MANY NEWSPAPERS IN THIS COUNTRY WHICH HAVE ACCESS TO LARGE SECTIONS OF THE PENTAGON STUDY ARE NOW IN THE BUSINESS OF WITHHOLDING IT FROM THE PUBLIC, JUST AS THE DEFENSE DEPARTMENT WAS FOR SO LONG IN THAT BUSINESS."

ELLSBERG SAID HE UNDERSTOOD THE PROBLEMS NEWSPAPERS HAD IN PRINTING THE DOCUMENTS BUT IT WAS IMPORTANT THE PUBLIC HAVE THE WHOLE STUDY.

"I CAN SAY IT, A NEWSPAPER CAN SAY IT, BUT IT DOESN'T GET THROUGH," HE SAID. "WHAT GETS THROUGH IS TO HOLD IN YOUR HANDS THE WEIGHT OF 7,000 DOCUMENTS AND LOOK AT THEM AND DISCOVER THE DEGREE TO WHICH AMERICAN OFFICIALS WERE CAUGHT UP IN THE DAY-TO-DAY DETAILED DECISION-MAKING ON THE WAR."

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UPI-168

(PENTAGON PAPERS)

WASHINGTON--SUPREME COURT JUSTICE HUGO L. BLACK TODAY GRANTED RESEARCH ANALYST ANTHONY J. RUSSO A REPRIEVE FROM JAIL UNTIL AUGUST 16. RUSSO, 34, WHO WORKED WITH DR. DANIEL ELLSBERG AT THE RAND CORP. IN SANTA MONICA, CALIF., HAS BEEN ORDERED CONFINED FOR HIS REFUSAL ON JUNE 23 TO TALK TO A FEDERAL GRAND JURY IN LOS ANGELES ABOUT THE PENTAGON PAPERS.

ELLSBERG AT THAT TIME HAS ALREADY BEEN INDICTED BY THE SAME GRAND JURY IN CONNECTION WITH HIS ACTIVITIES IN LEAKING THE SECRET VIETNAM WAR STUDY TO THE PRESS.

RUSSO ARGUED THAT THE QUESTIONS PROPOUNDED TO HIM FLOWED FROM UNLAWFUL WIRETAPS. BUT FEDERAL DISTRICT JUDGE WILLIAM P. GRAY FOUND HIM IN CONTEMPT OF COURT AND ORDERED HIM TO JAIL.

GRAY WAS UPHOLD ON AUG. 2 BY THE 9TH U.S. CIRCUIT COURT OF APPEALS BUT THE ACTION WAS STAYED UNTIL AUG. 9 TO PERMIT RUSSO TO COME TO THE SUPREME COURT.

RUSSO WANTS THE HIGH COURT TO DECIDE WHETHER A GRAND JURY WITNESS HAS A RIGHT TO A HEARING TO DETERMINE WHETHER QUESTIONS TO HIM STEM FROM UNCONSTITUTIONAL SURVEILLANCE. BUT, SINCE THE COURT IS OUT OF SESSION UNTIL OCTOBER, HE WANTS TO REMAIN FREE IN THE MEANWHILE.

RUSSO'S APPLICATION TO STAY THE 9TH CIRCUIT'S DECISION WAS ADDRESSED TO JUSTICE WILLIAM O. DOUGLAS, WHO NORMALLY ADMINISTERS THAT CIRCUIT. BUT SINCE RUSSO WAS SCHEDULED TO GO TO JAIL NEXT MONDAY, BLACK ISSUED A TEMPORARY STAY UNTIL DOUGLAS, WHO IS AT HIS REMOTE VACATION RETREAT IN GOOSE PRAIRIE, WASH., CAN LOOK AT THE PAPERS.

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WASHINGTON CAPITAL NEWS SERVICE

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(Mount Clipping in Space Below)

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 Miss Holmes _____
 Miss Gandy _____

Unfair to FBI

One should be fair, even to the FBI. Sanford Ungar's article on the FBI and Daniel Ellsberg in the Sunday Globe of July 25 is not. One FBI agent, not several, interviewed me. In a forty-minute interview he asked one or two questions about Ellsberg's personal characteristics. All other information asked for was factual and objective. I got no impression of an attempt to build up a picture of Ellsberg as an odd or erratic person.

EVERETT E. HAGEN
 Director, Center for
 International Studies,
 MIT

Cambridge

*was small
 very noisy*
 REC-15

(Indicate page, name of newspaper, city and state.)

12

THE BOSTON GLOBE
 BOSTON, MASS.

THE BOSTON HERALD
 TRAVELER
 BOSTON, MASS.

THE BOSTON RECORD
 AMERICAN
 BOSTON, MASS.

Date: 8-2-71
 Edition: Evening
 Author:
 Editor: Thomas Winship
 Title: UNFAIR TO FBI

Character:
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Classification:

Submitting Office: Boston

☐ Being Investigated

EX 101

EX-15 REC-15

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way to pick up secrets. My ~~packet-tape recorder~~ — he pointed to what appeared to be an eyeglass case in the breast pocket of his tuxedo — “catches every sound within 15 feet. Everybody trusts a bartender; you’d be surprised how many secrets are spilled in my presence. Besides, all the bigwigs turn out for embassy parties. So far tonight, I’ve seen the secretaries of Defense, State, Treasury, at least five ambassadors, Martha Mitchell — you name them, I’ve seen ‘em.”

A middle-aged fat woman in a green mini skirt and a tight red jersey blouse sidled up to the bar and asked for a Gibson with three onions.

“Another code?” I whispered to the bartender as the woman waddled away.

“No,” was his reply. “I guess she just likes pickled onions.” He dug into a tub of ice cubes, drew out a plastic pouch and slid it across the bar to me. “I knew you’d be here tonight,” he said, “so I brought this.”

“What is it?”

“Secrets from the Pentagon. Everything you’ve always wanted to know about our involvement in Indo-China but were afraid to ask. There’s even

a commentary by Marco Polo.

“Polo has been dead 600 years.”

“Really? Well, anyway, General Habicht quoted him in a memo to President Kennedy.”

“But why are you giving Pentagon secrets to me?”

“I’m a hawk turned dove. I want to expose the men that got us bogged down in Vietnam. The people have a right to know who they were and how they did it. I’ll give you the papers from the blonde, too, soon as I’ve had them Xeroxed.”

SOME OF THE papers were stamped “Top Secret,” others “Confidential,” “Middle Secret,” “Bottom Secret,” “Non-Secret,” and “Eyes only.” There were also two tape cassettes marked “Ears Only.” These were coded rock concerts, but 368-09-8692 and his blonde undercover girl translated them for me Sensational!

Why haven’t I published the secrets gleaned from these documents and recordings?

I’m putting them into a paperback to be entitled “More Pentagon Paper Capers.” Watch for it (advt.) on your favorite paperback rack.

JURY MAY WIDEN ELLSBERG INQUIRY

Coast Panel That Indicted Him Resumes Investigation

Special to The New York Times

LOS ANGELES, Aug. 7—A secret Federal grand jury resumed its investigation here this week into how the Pentagon papers were made public.

The same grand jury last month indicted Dr. Daniel Ellsberg on two counts of illegal possession of secret documents.

Dr. Ellsberg, a former Government official who is now a research fellow at the Massachusetts Institute of Technology, has said that he gave copies of the papers to the press.

Justice Department officials have refused to discuss the case, but it is generally believed the grand jury has two possible purposes.

Conspiracy Charge Possible

One would be to change or expand the indictment against Dr. Ellsberg. The original indictment was issued hastily to appear before the Supreme Court ruled on whether newspapers could publish material from the Pentagon study of the Vietnam war. There was speculation here that in its haste the Government had not presented its strongest case against Dr. Ellsberg.

Informed sources believe that if the indictment is expanded, Dr. Ellsberg might be charged with conspiracy. The Government has used the conspiracy charge in many important cases, mainly because it is easier to prove than actual criminal activity.

Secondly, the grand jury could indict persons other than Dr. Ellsberg, particularly if the conspiracy charge is introduced into the case.

Some lawyers, however, feel that the Government may be using the grand jury merely to gather more evidence against Dr. Ellsberg. Since the proceedings are secret, prosecutors sometimes find the grand jury a more convenient form for obtaining information than an open courtroom.

According to reliable sources, about five persons were subpoenaed to testify this week, including several relatives of Dr. Ellsberg and his wife, the former Patricia Marx. One of those called was Steven Marx, Mrs. Ellsberg's brother. Mr. Marx, 22 years old, is a former Harvard student, now living in Big Sur, Calif.

None Granted Immunity

It was learned that none of the witnesses were granted immunity from prosecution in order to compel them to testify. Observers said that this could mean that some of the witnesses were prospective defendants. It could also mean that the Government is trying to keep the current hearings quiet, since immunity has to be granted by a Federal judge in open court.

The grand jury here has been concentrating on how Dr. Ellsberg copied and distributed the massive Pentagon study. Dr. Ellsberg worked for several years at the Rand Corporation at nearby Santa Monica, which had two copies of the secret report.

Another grand jury in Boston has reportedly been hearing testimony on how the papers were actually published.

Last month the grand jury here called two witnesses, Anthony J. Russo, a former colleague of Dr. Ellsberg at Rand, and Mrs. Lynda Sinay, a friend of both men. Mrs. Sinay, who was granted immunity, told the grand jury that Dr. Ellsberg had paid her \$150 to duplicate several thousand pages of material on a Xerox machine she kept in her advertising office.

Mr. Russo, who also received immunity, refused to testify. He was held in contempt of court and ordered to jail. But Mr. Russo has won several stays of his sentence, the latest yesterday, when the United States Supreme Court gave him until Aug. 16 to appeal the contempt charge. That is the same day Dr. Ellsberg is scheduled to appear here in Los Angeles for arraignment on the original charges.

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Date AUG 8 1971

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Russo Wins Delay

WASHINGTON, Aug. 6 (AP)—Anthony J. Russo, the research analyst who refused to testify before a grand jury in the Pentagon papers case, was granted a temporary reprieve from prison today by Justice Hugo L. Black.

Mr. Russo was to surrender at 2 P.M. Monday to a United States marshal. He had been found in contempt for declining to testify before the federal grand jury in Los Angeles. Justice Black acted at the Supreme Court for Justice William O. Douglas, who is at his summer home in Goose Prairie, Wash.

Justice Black's order permits Mr. Russo to remain free until Aug. 16, a delay of one week. In the interim Justice Douglas is to review a plea filed for Mr. Russo with the Court earlier today as well as an anticipated Justice Department response. Mr. Russo's central claim is that the subpoena was based on unlawful wiretapping.

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**Newman Probe
 On George Jessel
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Rep. William H. Harsha, R-Ohio, says commentator Edwin Newman had unfairly censored comedian George Jessel during a television interview, and he has asked the House to investigate the incident.

Harsha referred to a conversation Friday between Newman and Jessel on NBC-TV's "Today" show. Jessel, with deliberate slips of the tongue, equated the Washington Post and the New York Times with the official Soviet newspaper Pravda. Newman told Jessel his remarks were in poor taste and ended the interview ahead of schedule.

Harsha said yesterday he had asked Chairman Harley O. Staggers of the House Commerce Committee to investigate the matter.

Harsha said Pravda is the Russian word for "truth" and said Jessel was "being sarcastic ... scornfully questioning the objectivity of the Post and the Times."

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59 AUG 13 1971

Judge Orders Ellsberg Face Charges in L.A.

Boston, Aug. 5 (Combined Services) — A federal judge ordered today that Daniel Ellsberg be removed to Los Angeles to face charges of illegal possession of secret government documents in the Pentagon papers case.

Ellsberg, 40, a research associate at the Massachusetts Institute of Technology, has said publicly that he leaked the papers' contents to the news media.

At a removal hearing, U.S. District Judge W. Arthur Garrity Jr. set Aug. 16 as the arraignment date for Ellsberg in Los Angeles.

Judge Disappointed

Garrity said he was disappointed that Ellsberg was not in court today but accepted the pledge of chief defense attorney Leonard B. Boudin that Ellsberg would report to the California court.

With the consent of government attorneys, Garrity allowed Ellsberg to continue to be free on \$50,000 bail.

Ellsberg, a former Defense Department and State Department economist, helped prepare the Pentagon study when he worked several years ago for the Rand Corp. in Santa Monica, Calif. He surrendered to federal authorities June 23 in Boston after he was indicted. Ellsberg has said that he released the documents because "the people have a need and a right to know the truth."



Daniel Ellsberg
Absent from court session

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A Question of National Security or Vengeance?

By Flora Lewis

FOR A government dominated by lawyers, the administration is taking some strange positions.

Now, from the Department of Defense, comes word that release of nonsensitive parts of the Pentagon Papers has to be postponed indefinitely beyond the 45-day deadline promised by Secretary Melvin Laird. The reason officially given is that release might "jeopardize the legal rights of individuals and of the government because of potential criminal actions and pending investigations." This, the statement said, was on recommendation of the Pentagon's general counsel.

So far as the Pentagon spokesman knows, nowhere in guidelines for classifying documents for national security is there anything about not getting in the way of criminal cases which the government might bring. And in fact the Pentagon says it simply can't answer the obvious question of what releasing documents no longer considered secret has to do with anybody's "legal rights."

But it does say cheerfully that "as soon as legal requirements permit and damage assessments are completed, it will be possible to release substantial portions of the study (Pentagon Papers)."

That is to say, the government itself considers that a lot of it isn't secret. But, it says, even what isn't secret can't be revealed now for reasons that have nothing to do with defense or national security.

What reasons, then?

DANIEL ELLSBERG has been indicted for his part in disclosing the papers. Further, the administration is still evidently considering whether to prosecute some of the newsmen who accepted the papers and wrote about them, and the New York Times, Washington Post and Boston Globe, the first three newspapers to publish them.

So it appears that executive privilege and the right to keep national security secrets are being used just to help the government make a case, which might not be there otherwise.

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Rufus Edmisten, counsel to Sen. Sam Ervin's subcommittee on separation of powers, says that "it's some kind of legal mumbo jumbo to hide something that might be detrimental to their (the government's) case." The Pentagon, he says, has been coming up "with some of the queerest legal principles I ever heard of. I don't think they're acting legally."

Another complete logical blank in the Pentagon's explanation for holding up release is that assessments haven't been finished on how much "unauthorized disclosure has harmed or would harm" national security. Why do documents have to be withheld to find out how much damage their publication has already done? Once again, the Pentagon's answer is that they don't have an answer.

IT'S IMPOSSIBLE to make sense of this without looking beyond what the administration has said in public. It leads to the unhappy suspicion that it isn't security but vengeance, or anyway panicky self-protection, that is keeping the government from releasing the papers now. If it did, it might be admitting that there isn't any case of stolen secrets because they weren't secret any more. And if there wasn't any crime, then there won't be any criminals, or any way to get even with the Supreme Court for deciding against the government when it tried to prevent publication.

Sen. Ervin, a North Carolina conservative stalwart, has said he thinks that "rather than protecting national security, (this policy) is protecting some politician's security."

Further, Ervin has become so provoked with the whole government approach to secrecy on questions of clear public concern that he is holding hearings on the issue of executive privilege—the administration's right to tell Congress "we won't tell."

The executive branch, under law, does have a right to refuse information to Con-

gress, but only on personal request from the President and with an explanation of his reason. For many years, this rule has been shelved in favor of a rule of courtesy under which Congress doesn't insist if officials keep mum. That evolved as a lubricant to make a government of separate powers run smoothly.

But now many members of Congress feel it has been abused so long and so outrageously that something drastic must be done. Sen. Fulbright told Sen. Ervin's subcommittee that he's going to introduce a bill providing that whenever Congress asks for information, if the President doesn't formally request privilege according to hard rule and the material isn't delivered within 60 days, the funds of the department involved will be cut off.

That comes near to a declaration of war between the legislature and the executive. It would be an explosive confrontation, and a sorry way to run a government. But it may well come to that if the executive persists, as it has from administration to administration, in using secrecy as a weapon against Congress, the public, and now it seems the criminal courts.

Ellsberg Attorneys Press on 'Bugging'

By LYLE DENNISTON
Star Staff Writer

Attorneys for Dr. Daniel Ellsberg made a second attempt in Boston today to force the government to say whether it eavesdropped on him while investigating his disclosure of the secret "Pentagon papers."

Their first plea failed yesterday as a U.S. magistrate, Peter A. Princi, concluded that the surveillance issue should be considered only after Ellsberg is taken to California to stand trial on charges of stealing the Vietnam war study.

Lawyers for the 40-year-old Ellsberg had argued that the government should be allowed to take no steps toward prosecuting him until after it was clearly proven that the federal charges did not stem from illegal use of listening devices.

Hearing Today

Following Princi's rejection of that plea, Ellsberg's attorneys made the same argument, in a hearing this morning, to U.S. District Judge W. Arthur Garrity Jr.

The Justice Department again opposed any ruling on the eavesdrop question. At this point, the department has contended, the only issue is whether Ellsberg is to be ordered to go to Los Angeles for trial.

Once an actual trial has begun, the government's attorneys have contended, lawyers for Ellsberg may make their demand about surveillance. The department has not conceded that any of Ellsberg's conversations were overheard by federal agents.

Ellsberg was charged by a Los Angeles grand jury with stealing the 47-volume Pentagon study and refusing to return it to the government. Each of those charges could lead, if he is convicted to 10 years in prison and to \$10,000 in fines.

Admitting Giving Papers

The former Defense Department analyst, now on the faculty of Massachusetts Institute of Technology, has admitted giving copies of the Pentagon papers to newspapers. The Justice Department had unsuccessfully to stop three newspapers from printing stories about the secret

The eavesdropping issue raised by Ellsberg's attorneys grew out of attempts to get the federal charges dismissed.

If the government admitted it listened to any of his conversations without having advance permission from a court to do so, his lawyers would then have an opportunity to show that this was an illegal basis for the evidence against him.

Should a federal court agree that the federal case was somehow "tainted" by illegal eavesdropping, it would order dismissal of the charges.

If Judge Garrity agrees with the conclusions announced yesterday by Magistrate Princi, the eavesdrop issue would be postponed and Ellsberg probably would have little chance to avoid a trip to California for the trial.

The magistrate, who is a low-ranking official in the federal judiciary, had no power on his own to order Ellsberg to be taken to the West Coast. He was authorized only to make a recommendation to a federal judge — in this case, Judge Garrity.

Princi suggested that "the proper forum" to handle the eavesdropping challenge was the federal court in Los Angeles. He said an order should now be issued to require Ellsberg's "removal" to Los Angeles.

The government had taken its case against Ellsberg to a grand jury in California primarily because that is near the headquarters of Rand Corp., where Ellsberg was working when he had access to the Pentagon papers.

The charges accuse him of having Xerox copies of the secret study in the fall of 1969. The theft charge accuses him of "converting to his own use" the documents, and the charge based on a section of the Espionage Act accuses him of unauthorized possession of secret government data.

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ELLSBERG LOSES PLEA IN BOSTON

A U.S. District judge in Boston ruled today that Dr. Daniel Ellsberg must be taken to Los Angeles for trial on charges that he stole the secret "Pentagon papers."

Judge W. Arthur Garrity Jr. turned down attempts by Ellsberg's lawyers to force the government to say now whether federal agents illegally eavesdropped on him while he was under investigation.

The eavesdropping issue will have to be raised by the attorneys at the opening of the criminal prosecution in California.

Garrity's decision today upheld an earlier ruling by U.S. Magistrate Peter A. Finch.

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New C.I.A. Watchdog

F. Edward Hébert, chairman of the House Armed Services Committee, has appointed an active antiwar Congressman, Lucien N. Nedzi, a Michigan Democrat, chairman of the House subcommittee that keeps an eye on the Central Intelligence Agency.

Why? "Because he's a good man, even though we're opposed philosophically," said Mr. Hébert, who instructed Mr. Nedzi "to make periodic inquiries into all phases of intelligence activities within the Department of Defense and within the agencies established under the National Securities Act."

Mr. Nedzi said that Mr. Hébert, a Louisiana Democrat, had placed "no restrictions of any sort" on him, even though he's been highly critical of the war in Vietnam and Pentagon policies.

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59 AUG 13 1971

Ellsberg Friend Ordered Jailed In 'Papers' Case

By BOB ROSE
Chicago Daily News Service

LOS ANGELES — Former Rand Corp. employee Anthony J. Russo, a friend and colleague of Daniel Ellsberg, has been ordered to jail until he agrees to talk about the Pentagon papers.

A three-judge federal appeals court yesterday upheld U.S. District Judge William Gray, who found Russo in contempt a month ago when he refused to tell a grand jury what he knows.

"Their questions all involved Mr. Russo's relationship with Mr. Ellsberg," Russo's attorney, Joseph Ball, told newsmen. "But I don't think he knows anything about the papers."

The grand jury later indicted Ellsberg on charges he failed to return secret documents to Rand Corp. He admitted publicly he made copies of the report on the Vietnam war and gave it to the New York Times for publication.

Ellsberg, 40, a research assistant at Massachusetts Institute of Technology, is fighting efforts to return him to Los Angeles for trial.

Lawyers said Russo will have to stay in jail until he decides to talk or until the grand jury is dissolved.

Russo, 34, who has been free on his own recognizance, was ordered to surrender to the U.S. marshal by 2 p.m. tomorrow.

In Russo's hearing in U.S. Circuit Court of Appeals, a government prosecutor, Robert Keuch, said the grand jury's investigation was continuing and that it may bring more indictments.

There are "possibly other defendants and possibly other activities," said Keuch, chief of the appeals section of the Internal Security Division of the Department of Justice. He did not elaborate.

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17 on Hill Open Conference on Pentagon Study

By Stephen Klaidman
Washington Post Staff Writer

Seventeen antiwar congressmen opened a three-day conference yesterday on the implications of the Pentagon papers "for present and future policy."

The congressmen, all Democrats, and their invited guest speakers viewed the publication of the papers as good, but displayed little confidence that their disclosure would hasten the end of the Vietnam war.

Much of the discussion at the opening session was devoted to criticism of the Nixon administration for not having already ended the war.

Daniel Ellsberg, who worked on the top-secret papers and faces a possible jail sentence for having leaked them to the press, will appear at today's session.

Former Sen. Ernest Gruening (D-Alaska) charged that Mr. Nixon was elected on promises of ending the war and then "extended it into Laos and Cambodia."

"We're doing the same things we condemned Hitler and Mussolini for," Gruening said. "The only difference is that we do it in the name of liberation and self-determination, thereby adding hypocrisy to our sins." The former senator was the only speaker to receive an ovation.

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Despite the efforts of the moderator, Rep. John G. Dow (D-N.Y.), to focus the discussion on the 47-volume Pentagon document, which is available to the congressmen in a censored version, the speakers kept returning to two subjects not dealt with in the papers—getting out of Vietnam and the human misery caused by the war.

One speaker who did concentrate on the documents—both the form and the substance—was MIT Prof. Noam Chomsky.

From disclosures in the papers, Chomsky accused the Kennedy and Johnson administrations of "enormous deceit . . . shocking ignorance . . . profound misunderstanding of North Vietnamese nationalism . . ."

He said he felt that publication of the papers was valuable for the insight into the

"mentality of policy planners of the last 20 years" and for illustrating the danger of "power insulated from public scrutiny."

Tony Russo, who worked for the Rand Corp. in Vietnam and is currently under a contempt citation for refusing to testify before a grand jury about Ellsberg's involvement in channeling the papers to the press, alleged that "present policy rests on as many lies and as much deceit as we see in the Pentagon papers."

Melvin Gurtov, another former Rand Corp. specialist, who worked on the section of the Pentagon papers dealing with 1945 to 1954, also charged that "the truth about U.S. objectives and activities in Indochina is being hidden and distorted as much now as before . . ."

Gurtov had praise for CIA analysts — as distinct from agents — for their lucid studies of the problems faced by the United States in Indochina, but he said their recommendations were ignored when they challenged the presumptions on which three administrations have waged the Vietnam war. Chomsky agreed with Gurtov's favorable assessment of the CIA analyses.

Fred Branfman, who covered Laos for Dispatch News Service, emphasized the active rather than the analytical role of the CIA. He charged that the intelligence agency "exerts functional control in Laos" through its clandestine army, and its link with the Royal Lao government and its virtual monopoly on information from Pathet Lao-controlled areas.

The congressmen sponsoring the conference, besides Dow, are: James Abourezk (S.D.), Phillip Burton (Calif.), John Conyers (Mich.), Robert Drinan (Mass.), Bob Eckhardt (Texas), Don Edwards (Calif.), Don Fraser (Minn.), Michael Harrington (Mass.), Henry Helstoski (N.J.), Bob Kastenmeier (Wis.), Edward Koch (N.Y.), Abner Mikva (Ill.), Parnell Mitchell (Md.), Benjamin Rosenthal (N.Y.), William F. Ryan (N.Y.) and John Seiberling (Ohio).

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By MARY McGRORY

What Did Ellsberg Achieve?

To what avail did Daniel Ellsberg risk jail to give the Pentagon papers to the nation?

Not much, was the general opinion at the somber opening session of a conference on the documents called by Rep. John Dow, D-N.Y., and heavily attended by people under 30.

The same sad stories of murder, torture, imprisonment were told, sadder for the frequent reminders that they are still unfolding daily.

What had been learned from a study of the papers?

Rep. Robert F. Drinan, D-Mass., pointed out that at least he had learned that the Central Intelligence Agency had addressed itself to the realities of the situation from the beginning. But that small ray of hope that sanity exists in some part of the government was quickly canceled. Fred Branfman, the principal chronicler of the agony of Laos, pointed out that a CIA-sponsored army is fighting in Laos.

What had the administration learned?

Only to package its continuation of the Johnson policies more skillfully, according to Melvin Gertov, one of the authors of the Pentagon papers, which Daniel Ellsberg had hoped would smite the conscience of a nation.

And what had Congress learned?

Nothing, said Rep. Don Edwards, D-Calif., bleakly.

"I don't see any great effect on the House of Representatives," he said. "Even on the Senate. Most members of the Senate have indicated their

support of the President's course."

Was it fear or conviction that kept them in line, with reports of drugs, atrocities, corruption exploding all around them? he was asked.

"Conviction," he replied. "Generally they are in favor of the purposes of the war."

Since the publication in paperback on July 8, Bantam Books has sold a million and a half copies of The Pentagon Papers. Sales have fallen off slightly, but an upsurge is anticipated in the fall with return to college, where they are least needed.

The lesson of the papers, it was agreed, was that the United States had proceeded to "save" Vietnam with a total disregard of its people. Four South Vietnamese were at Tuesday's opening session of the conference to attest to this inhumanity with special bitterness.

Tran Van Dinh, a small man with a worn face, former deputy ambassador from South Vietnam during the Diem administration, said: "Many South Vietnamese people believed in this country. Ho Chi Minh believed in you in 1945; he didn't know about your Indian wars or what you did during the Philippine insurrection. We are confused. We read the Declaration of Independence and what we see is different. We don't know what America is all about."

What emerges from the papers is that U.S. foreign policy planners were performing a prefrontal lobotomy on a small country, without its permission and without anesthetics.

But the tone of the discussion was neither partisan nor

vindictive, despite the expressed fears of two Republican visitors. There is blame for all: For four presidents who refused to admit defeat at the hands of stubborn peasants; for a Congress which voted billions of dollars for the slaughter; for a press which accepted unquestioningly government propaganda.

Prof. Noam Chomsky of MIT, a scholar who has nothing to apologize for, said it wasn't the system that failed, "it was the absolute failure to make use of it at every point."

Anthony J. Russo, Ellsberg's friend and associate at Rand, said he thought the problem was that the foreign policy of this country was in the grip of a very small elite "that does not respect the American people."

Once, in Saigon, he asked one of these lordly figures what role morality plays in the foreign policy of the United States.

"Morality is irrelevant in the conduct of U.S. affairs," he said he was told.

The Pentagon papers make that point on every page. But some people knew it all the time. The others don't want to know it.

And as Ellsberg dryly remarked in one of the several television appearances he has made in the interests of inducing the public to share his outrage at the revelations of the documents, four presidents have regarded the policy as a success. It has not brought victory, but it has postponed failure, and thus the "nightmare of recriminations" which President Nixon has said the country cannot face if it "loses" the war.

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McGovern Denies Tip To Ellsberg

(AP)—Sen. ^{A-3} George McGovern's press secretary has denied a report that McGovern suggested to Daniel Ellsberg that he release the Pentagon papers to a particular newspaper.

Commenting on a report in the Aug. 1 edition of Parade, a Sunday newspaper supplement, McGovern aide Jeff Gralnick said the South Dakota Democrat told Ellsberg it was Ellsberg's decision whether the information should be made public and that Ellsberg would have to be responsible for any release.

The Parade report quoted McGovern, who is seeking the Democratic presidential nomination, as saying:

"What happened is that Mr. Ellsberg came to me and told me that such papers existed. I told him that I felt as a lawmaker that I could not be in the business of breaking the law, but I did make it clear to him that I thought it would serve the public interest if he made those documents available to a respectable newspaper."

Gralnick said McGovern told Ellsberg he could release information through the press if he wished, but never suggested release. Ellsberg, a former Rand Corp. employee, has said he supplied the press with copies of the secret study on Vietnam.

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MIRROR 7-23 NX

NEW YORK (UPI)--THE NEW YORK DAILY MIRROR IN AN EDITORIAL THURSDAY DEMANDS ATTORNEY GENERAL JOHN R. MITCHELL TO PROSECUTE THE NEW YORK TIMES FOR STEALING, POSSESSING AND SELLING THE PENTAGON PAPERS. "FAILING TO DO SO WILL BE A DERELICTION OF YOUR DUTIES," SAID THE MIRROR, WHICH ALONG WITH THE TIMES IS ONE OF THE CITY'S THREE MORNING NEWSPAPERS.

THE EDITORIAL SAID IN ADDITION TO PUBLISHING THE PAPERS ON TWO LAST PAGES, THE TIMES "HAD THE GALL TO PUBLISH A PAPERBACK BOOK IN CONJUNCTION WITH BANTAM BOOKS" WHICH IN PAPERBACK COULD BRING \$1 MILLION.

"BREAKING THE LAW IS NOT A LUXURY FOR THE RICH AND POWERFUL," THE MIRROR SAID. "THE TIME FOR THE INDICTMENT OF THE NEW YORK TIMES, ITS OFFICERS AND EXECUTIVES, HAS COME. WE DEMAND IT NOW."

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UPI-57

(PENTAGON PAPERS)

MOSCOW--THE SOVIET UNION HAS PUBLISHED A BOOK BASED ON THE PENTAGON PAPERS TO "EXPOSE THE LIES, DECEPTIONS AND HYPOCRISY" OF U.S. POLICYMAKERS, TASS SAID TODAY.

"THE PUBLISHING HOUSE OF POLITICAL LITERATURE ISSUED A GREAT NUMBER OF COPIES OF THE BOOK, ESCALATION OF THE WAR AND DECEPTION," TASS SAID.

"USING THE SECRET PENTAGON MATERIALS ABOUT THE VIETNAM WAR THAT WERE PUBLISHED IN THE UNITED STATES, SOVIET JOURNALISTS SHOW HOW THE UNITED STATES AGGRESSION IN INDOCHINA WAS PREPARED AND LAUNCHED."

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UPI-57

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(Mount Clipping in Space Below)

Ellsberg, once resigned to jail, now set to fight

By S. J. Micciche
Globe Washington Bureau

WASHINGTON — Lyndon Baines Johnson, former President, gentleman rancher, and emerging author, might become a defense witness for Dr. Daniel Ellsberg, charged with leaking the Pentagon papers on the Vietnam War.

Former President Truman and the biographer of the late President Eisenhower also could be summoned, as well as former Defense Secretaries Robert S. McNamara and Clark Clifford, and former Secretaries of State Dean Acheson and Dean Rusk, and the Bundy brothers.

Anyone, in fact, who may have used government documents after leaving office to write memoirs or selective reminiscences of experiences in the Federal hierarchy may be called.

The appearance of such a glittering cast for Ellsberg is speculative, of course, but definitely not far fetched and certainly within the reach of legal possibility.

Their roles as witnesses would have nothing to do with their judgment while in office, but rather relate directly to the precise

charges leveled against Ellsberg.

The case of the "purloined" Pentagon papers, if it goes to trial, will undoubtedly be classed among the most celebrated of this century, perhaps matching in intensity of the infamous Dreyfus trial in France in 1894.

Attorneys for Ellsberg, Leonard B. Boudin and Charles R. Nesson, quite logically are not about to reveal their defense strategy, especially now with a motion pending before Federal Magistrate Peter

A. Princi in Boston to dismiss the warrant of the Los Angeles grand jury against the MIT research associate.

But certainly they recognize the notoriety already attached to the Ellsberg case, and they are surely aware of the wide ranging defense options open to them in a trial of this magnitude.

Ellsberg, a Pentagon hawk during the early Johnson years, worked on the Vietnam documents in the study ordered by McNamara in 1968. Then, and even as late as

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Miss Holmes	_____
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THE BOSTON GLOBE
BOSTON, MASS.

THE BOSTON HERALD
TRAVELER
BOSTON, MASS.

THE BOSTON RECORD
AMERICAN
BOSTON, MASS.

Date: 7/18/71
Edition: Sunday
Author: SJ Micciche
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actions "were clearly in contradiction of security regulations, secrecy regulations and even more, the information practices of the Department of Defense. Nevertheless, I felt as an American citizen, a responsible citizen, I could no longer cooperate in concealing this information from the American people. I took this action on my own initiative and I am prepared for the consequences."

Ellsberg said then he would be "glad to go to jail to end this war. I wonder if many people here wouldn't think 10 years is a cheap price to pay."

Seemingly, Ellsberg was reconciled to a jail term, and his "only regret" was that he had not released the Pentagon papers sooner.

But now, Ellsberg's defense appears to have stiffened, perhaps in the light of close examination of the exact charges against him.

A factor also might be that the Federal statutes applied to Ellsberg and the Pentagon papers may have been generally ignored for ex-presidents and ex-cabinet officers, and their memoirs.

The indictments returned by the Federal Grand Jury in Los Angeles accuse Ellsberg of having "illegally possessed Xeroxed copies of separate sets of 47 volumes and 18 volumes respectively of a study entitled United States Vietnam Relations, 1945-1967."

According to the indictment, the study comprised "descriptive texts, cablegrams, memoranda, decision papers, and other internal executive branch documents."

The second charge against Ellsberg is that last September and October, he "did willfully, knowingly and unlawfully convert to his own use" copies of the documents.

Pertinent to Ellsberg's defense might be whether he did any more or any less than any other individual who leaves the government service and wants to say something about it.

Surely, when Presidents leave the White House, they take many of their papers and documents with them to put in their memoirs, and nothing incriminating has ever been attached to that respected practice.

The defense lawyers conceivably may wish to question former President Johnson about the material he used in writing his memoirs, which soon will reach the bookstalls.

With this question raised, the issue of the Ellsberg case could evolve around the right of individuals in government to make use of official documents in their writings after they retire to private life.

Many become most prolific about government service when they leave it. And if it is within the law for an ex-President or former cabinet officer to make use of government documents in this fashion, then what of Ellsberg?

The memoirs of LBJ would be particularly relevant to Ellsberg's trial, because they cover the period of American escalation in Vietnam. They would be even more relevant if the former President refreshed his recollection of the period by examining government documents after he left the White House.

Many officers of the

the first year of the Nixon Administration when he was part of the "think tank" of the Rand Corporation, Ellsberg possessed the necessary security clearance to examine these documents freely.

Struck by what he felt was a repetition the deception of the American people in 1964, Ellsberg admits leaking the Pentagon papers which focus on the peak of escalation in Southeast Asia.

Surrendering to Federal agents in Boston June 28, Ellsberg conceded that his

Johnson Administration published papers after leaving, without any imputation of wrong doing. Here too, there arises the question of how they obtained government documents, if indeed they were referred to in their writings.

These circumstances present questions which Ellsberg's defense lawyers may wish to ask directly of LBJ, Truman, McNamara, the Eisenhower chronicler. Acheson, Rusk, and the Bundys, all of whom have done some writing since leaving Federal service.

If the practice is legitimized in their use, the Ellsberg defense could argue discrimination by accident of the individual. For if the practice of using government documents for one's own use after leaving the Federal service is justified for one man, then equality of justice would carry the same privilege to Ellsberg — who in no incidental way worked on the Pentagon papers.

Questions in this context could open up the Ellsberg case.

Curiously, Ellsberg is charged with "illegal" possession of "copies," not of the original documents themselves.

The reason is he did have authority to examine and possess the originals. The question this raises is whether the grant of authority over the original documents extends to their copies.

Perhaps the only person to answer that one is McNamara himself, who directed that the study be made. Whatever authority Ellsberg had flowed from McNamara, and if in his opinion this included the right to possess and peruse copies then where does that leave the government's case?

Moreover, if Ellsberg had a right to copies, then how could he "convert" them to his own use "unlawfully?"

These are questions that truly only men who had served at the top of the government can perceptively answer, and they may have to be called as witnesses. It's that kind of case.

With this sort of possibility, the Ellsberg case may be recorded in history as that of Alfred Dreyfus, the French Army officer whose trial for treason shook that nation for 12 years.

Dreyfus, a Jew, was convicted in an atmosphere of intense anti-Semitic feelings in France for selling Army secrets to the Germans in 1894. The evidence was flimsy and erroneous. Condemned to Devil's Island for life, Dreyfus spent five years there before the case was reopened. Ultimately he was acquitted, restored to his rank of captain and awarded the Legion of Honor.

At the height of the turmoil, the French high command suppressed evidence of Dreyfus's innocence and dismissed the officer who had uncovered the true traitor, just to avoid the embarrassment of having condemned an innocent man to Devil's Island.

Though there is no similarity in the substance of the Dreyfus and Ellsberg cases, they are quite alike in the notion that above all a government must not be made to blush, even when grievously wrong.

Before the Ellsberg case is over, there may be even more similarities.



LEONARD BOUDIN
For the defense . . .



DANIEL ELLSBERG
. . . secret planning . . .



CHARLES NESSON
. . . holds the key

Joe's Papers

By Art Buchwald

No one seems to be more distraught over the release of the Pentagon Papers than the famed hawk columnist Joseph Wallstop.

When I visited Joe in his bunker underneath his house in Georgetown, Joe was frothing at the mouth.

"They were my papers," Joe cried. "The New York Times and The Washington Post had no right to use them."

I look confused. "How could they be your papers, Joe? I thought they belonged to the Pentagon."

"I have had a deal with three administrations to get first crack at all top secret classified documents."

"Why you, Joe?"

"Because I am a friend of the Pentagon, because I believe in the war, because when they leak a document to me they know it will be printed the way they wrote it. Now everyone has access to top secret material. It's not fair."

"Are you trying to tell me, Joe, that the Pentagon Papers aren't the first classified documents that got into the papers?"

"You must be a fool," Joe replied contemptuously. "Everyone of my columns is based on top secret information."

"The administration's quarrel with the leaking of the Pentagon Papers is not with what was revealed in them, but who printed them."

"Joe, if I hear you right, the government has been leaking classified documents to friendly newspapermen for years."

"I don't know how I can make it any clearer," Joe said in his usual irritated voice.

"Then what did The New York Times and The Washington Post do that was so wrong?"

"They printed unauthorized leaks of classified documents. The leaks that I have printed have been authorized by the highest men in government. When they give me a top secret paper I know they want to see it in the papers. For one thing it shows them in a good light which is very important if you're a high government official. The Pentagon Papers show high officials in a bad light and that, my friend, no matter how you look at it, is treason."

"Maybe Daniel Ellsberg didn't know The New York Times and The Washington Post were unauthorized to receive government secrets."

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"He knew it all right," Joe said. "And if there was any question he should have checked with the Joint Chiefs of Staff. They have a top secret list of newspapermen who can have access to classified documents. I can assure you that no one from The New York Times or The Washington Post is on that list."

"I can understand why you're mad, Joe. But is there anything you can do about it?"

"I certainly can. Since the Pentagon Papers were printed I have received hundreds of top secret classified documents from sources I cannot reveal, proving the Pentagon Papers are wrong."

"But how does the reader know your top secret papers are more accurate than Ellsberg's top secret papers?"

"Because mine were leaked to me by responsible men who have no ax to grind except to prove the decisions they made were right," Joe said.

"That makes sense. Wouldn't the government be wise to list the newspapermen they were leaking papers to so the public knows whom to trust?"

"I don't think you have to go that far," Joe said.

"The best test for the public when reading a secret document is: if it supports the government it's an authorized leak, and if it doesn't, it's a matter for the Justice Department and a grand jury."

The doorbell rang and a four-star general handed Joe a large brown envelope. "These are your columns for next week, Mr. Wallstop. Please sign here."

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John P. Roche Recollections Of Ellsberg

"SAINTS," said George Orwell, "must be presumed guilty until proved innocent." His point was that out of every 100 purported messiahs, at least 99 will turn out to be either kooks or hustlers.

Of course, the minute one says this he is accused of cynicism, of refusing to make a commitment, or of simply failing to understand the higher forms of idealism. Perhaps there is some truth in this accusation; perhaps some of us are just not favored with revelations from on high.

All this may seem like pretty abstract stuff, but the fact is that the United States at the moment is suffering from a surfeit of self-canonized saints. The latest entry is Daniel Ellsberg, whose dedication to some higher law led him to leak (or flood) the Pentagon papers. His essential claim is that the United States must be saved from itself and he has nominated himself for the job. (By definition, messiahs are not elected.) Let me make it clear that I am not questioning his sincerity, but frankly I have grave doubts about his qualifications.

My first encounter with Ellsberg was in Saigon in the spring of 1966. There had been a big fight within the administration on whether the United States should encourage the development of representative government in Vietnam. Some argued that establishing constitutional government would be de-stabilizing in the middle of a war; others felt it would be a move towards stability. President Johnson decided in February that it was essential and I was sent to Saigon (as a "consultant on public administration") to provide an independent reading of the situation.

Shortly after I arrived, I was invited by General Edward Lansdale to visit with his "team" at 194 Congly. Ellsberg was among those present. Without getting into the details, they had a theory of counter-insurgency that involved training 57-man Vietnamese teams to go out into the countryside. These Political Action Teams (PAT) were supposed to provide the South Viet-

namese peasants with the same sort of political dedication that the Communists provided in the North. This assembly line approach to political warfare struck me as absurd, but what impressed me most was the revivalistic mood of the gathering. When I asked politely what precisely the PAT were supposed to believe in, what would be their ideological motivation, a curious hush fell over the room. It was rather as though a cardinal had questioned the existence of God. And I was written off as simply incapable of comprehending the higher verities.

I FORGOT about Ellsberg until he turned up at the White House in late February or early March, 1968. He was peddling a memo all over town to the effect that the Tet offensive proved the war was lost, and brought a copy for one of my colleagues. The latter gave it to me to read and then invited me in with Ellsberg to discuss it. I thought Ellsberg was dead wrong in his analysis (which, I'm told, misled John Kenneth Galbraith in predicting at the time that the Saigon government would collapse in two weeks), but again what struck me most vividly was his fervor. And his total refusal to argue the question on the merits—his fervor to argue the question on the merits—again I was exiled from the company of the faithful. Only now the faith had changed!

The Tet offensive, in my judgment, had been a brilliantly executed political warfare operation, rather than an effort to take over the South militarily. It was designed in short, to influence American opinion; in General Giap's view, 40 to 50,000 dead was a small price to pay for undermining the American commitment. (Note that he sent his South Vietnamese — the Main Force VC — out on this suicide mission, and kept his Hanoi divisions in reserve.) Ellsberg's reaction was precisely what Giap had in mind.

This is not to question Ellsberg's loyalty to the United States, but to suggest that his judgment was bad, and more important, that whatever bad judgment he had was invariably disguised as a message from God.

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REVIEW 7-20 NX

NEW YORK (UPI)--THE NATIONAL REVIEW PUBLISHED GOVERNMENT DOCUMENTS ON THE VIETNAM WAR TODAY WHICH IT SAID WERE RECEIVED FROM AN INFORMANT PROTESTING PUBLICATION OF THE PENTAGON PAPERS. THE NEW MATERIAL SHOWS U.S. LEADERS PLANNING FOR SHORT-TERM INVOLVEMENT IN INDOCHINA.

"THE ARTICLES ARE FRAGMENTS FROM MORE EXTENSIVE FILES WHICH ... WERE MADE AVAILABLE TO NATIONAL REVIEW IN PROTEST AGAINST WHAT THE INFORMANT HELD TO BE THE DISTORTED IMPRESSIONS CONVEYED BY THE DOCUMENTS PUBLISHED IN THE NEW YORK TIMES," THE MAGAZINE SAID IN A STATEMENT.

THE 13 DOCUMENTS--WHICH INCLUDE INTERGOVERNMENTAL MEMORANDA AND PRIVATE LETTERS--CONVEY THE GENERAL IMPRESSION OF A GOVERNMENT TRYING NOT TO GET TIED DOWN IN SOUTHEAST ASIA.

AN ARTICLE SAID TO BE A NOTE WRITTEN BY SECRETARY OF STATE DEAN RUSK ON FEB. 10, 1965, SAID A HIGH-LEVEL MEETING DISCUSSED THE POSSIBILITY OF DECLARING WAR AGAINST NORTH VIETNAM. ONE REASON THE PROPOSAL WAS NOT CARRIED OUT WAS IT WAS BELIEVED THE GULF OF TONKIN RESOLUTION WOULD SUFFICE FOR A SHORT TERM ENGAGEMENT.

ANOTHER REASON, RUSK SAID, WAS SUCH A DECLARATION "CONJURES UP PROSPECT OF USE OF ATOMIC WEAPONS WHICH WE DO NOT WANT EVEN TO SUGGEST."

THE TIMES AND SEVERAL OTHER NEWSPAPERS LAST MONTH PRINTED PARTS OF A PENTAGON STUDY ON THE WAR, SHOWING A DEEPER AND DEEPER INVOLVEMENT IN INDOCHINA OVER THREE DECADES. THE SUPREME COURT UPHOLD THE PAPERS' RIGHT TO PRINT THE MATERIAL.

SO FAR, THE FEDERAL GOVERNMENT HAS TAKEN NO ACTION REGARDING THE LAWS DEALING WITH POSSESSION OF STOLEN CLASSIFIED DOCUMENTS.

A JUSTICE DEPARTMENT SPOKESMAN SAID HE WAS UNAWARE OF THE NATIONAL REVIEW ARTICLE, BUT SAID IF THE DOCUMENTS CITED IN THE STORY WERE CLASSIFIED, THE MAGAZINE "SHOULD BE SUBJECT TO THE SAME CRITERIA" AS OTHER PUBLICATIONS PRINTING SECRET MATERIAL.

THE NATIONAL REVIEW, A WEEKLY MAGAZINE EDITED BY WILLIAM F. HUCKLEY JR., SAID THE DOCUMENTS WERE WRITTEN BETWEEN 1962 AND 1967 AND DEALT WITH MILITARY OBJECTIVES, DIPLOMATIC CONSIDERATIONS AND ANALYSES OF THE WAR.

WASHINGTON CAPITAL NEWS SERVICE

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IN A LETTER DATED DEC. 11, 1963, THE DIVISION OF PSYCHOLOGICAL ASSESSMENT OF THE CENTRAL INTELLIGENCE AGENCY ARGUED AGAINST LONGER TERM WARFARE IN A MEMORANDUM TO SECRETARY OF DEFENSE ROBERT S. McNAMARA.

"THE OBJECTIVE OF WAR IS TO WIN AND TO DO SO AS QUICKLY AND WITH AS LITTLE LOSS OF LIFE, PROPERTY AND SOCIAL STABILITY AS POSSIBLE," THE LETTER SAID. "THIS OBJECTIVE CAN ONLY BE ACHIEVED BY A QUICK 'IN AND OUT' MOVE."

IN ARGUING FOR A SHORT-TERM WAR OF 12 TO 24 MONTHS, THE LETTER SAID "IT WOULD BE IN ERROR TO ASSUME A PROTRACTED CONFLICT IN SOUTHEAST ASIA WOULD BE SUPPORTED BY THE AMERICAN PEOPLE."

"ANY MOVE ON THE PART OF THE UNITED STATES WILL BE CRITICIZED BY A LARGE VOCAL MINORITY," IT SAID. "THIS MINORITY WILL GROW WITH TIME, FOR IT IS IN THE NATURE OF THE AMERICAN PEOPLE WHO WISH NOT TO BE OR SEEM TO BE BELLIGERENT."

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REVIEW 7-19 NX

NEW YORK (UPI)--THE NATIONAL REVIEW MONDAY PUBLISHED "HIGHLY CLASSIFIED" GOVERNMENT DOCUMENTS IT SAID AN INFORMANT APROVIDED TO PROTEST THE "DISTORTED IMPRESSIONS" CONVEYED BY THE SECRET DOCUMENTS ON THE VIETNAM WAR THE NEW YORK TIMES PUBLISHED RECENTLY.

"THE DOCUMENTS, WRITTEN BETWEEN 1962 AND 1967, DEAL WITH MILITARY OBJECTIVES, HIGHEST LEVEL DEIPLOMATIC CONSIDERATIONS, ANALYSES OF THE CRISIS IN SOUTH VIETNAM AND ITS BEARING ON U.S. AND WESTERN POLICIES....," THE MAGAZINE SAID IN A STATEMENT.

"THE ARTICLES ARE FRAGMENTS FROM MORE EXTENSIVE FILES WHICH... WERE MADE AVAILABLE TO NATIONAL REVIEW IN PROTEST AGAINST WHAT THE INFORMANT HELD TO BE THE DISTORTED IMPRESSIONS CONVEYED BY THE DOCUMENTS PUBLISHED IN THE NEW YORK TIMES," IT SAID.

AMONG THE DOCUMENTS WAS A CABLE OF FEB. 12, 1965 FROM ADM. ULYSSES S. GRANT SHARP, THEN COMMANDER IN CHIEF OF THE PACIFIC FLEET (CINCPAC) TO THE JOINT CHIEFS OF STAFF. "IT INDICATES THAT THE PROPOSAL TO MAKE ONE OR ANOTHER USE OF NUCLEAR WEAPONS REMAINED ALIVE WITHIN THE MILITARY AS WELL AS AT LEAST ONE SECTION OF THE INTELLIGENCE COMMUNITY," THE NATIONAL REVIEW ARTICLE SAID.

"TOTAL IMPACT OF A SUCCESSFUL HIGH ALTITUDE DROP OFF HAIPHONG HARBOR ON DRV (DEMOCRATIC REPUBLIC OF NORTH VIETNAM) LEADERSHIP IMPOSSIBLE TO ESTIMATE DIRECTLY," THE CABLE SAID. "HOWEVER, CINCPAC FINDS IT DIFFICULT TO VISUALIZE ANY OTHER COURSE OF ACTION FOR US IN PRESENT CONFLICT WHICH WOULD BE MORE LIKELY TO (A) BRING DRV TO CONFERENCE TABLE, (B) ENABLE US TO SETTLE CONFLICT ON FAVORABLE TERMS FOR OURSELVES AND GVN (GOVERNMENT OF SOUTH VIETNAM), AND (C) SAVE LIVES OF AMERICAN FIGHTING MEN."

TOP CLIPPING

DATED 7-20-71

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WASHINGTON CAPITAL NEWS SERVICE

THE DOCUMENTS ALSO INCLUDED THE CONTENTS OF WHAT THE MAGAZINE SAID WAS A HANDWRITTEN NOTE BY SECRETARY OF STATE DEAN RUSK SUMMARIZING THE PROS AND CONS DISCUSSED AT A HIGH-LEVEL DEPARTMENTAL MEETING ON THE SUBJECT OF SEEKING A DECLARATION OF WAR. IT WAS DATED FEB. 10, 1965.

THE NOTE SAID, IN PART, THAT FOR A SHORT-TERM EFFORT THE DNKIN RESOLUTION WOULD BE SUFFICIENT AND A DECLARATION OF WAR WOULD BECOME DESIRABLE ONLY IF THE WAR WERE TO LAST FOR YEARS.

IT ALSO SAID THAT A DECLARATION OF WAR "CONJURES UP PROSPECT OF USE OF ATOMIC WEAPONS WHICH WE DO NOT WANT EVEN TO SUGGEST."

THE DIVISION OF PSYCHOLOGICAL ASSESSMENT OF THE CENTRAL INTELLIGENCE AGENCY ARGUED AGAINST LONG TERM WARFARE (LTW) IN VIETNAM IN A MEMORANDUM TO THE SECRETARY OF DEFENSE ROBERT MCNAMARA DATED DEC. 11, 1963.

IN RECOMMENDING SHORT-TERM WARFARE (12 TO 24 MONTHS), THE MEMO SAID: "THE OBJECTIVE OF WAR IS TO WIN AND TO DO SO AS QUICKLY AND WITH AS LITTLE LOSS OF LIFE, PROPERTY AND SOCIETAL STABILITY AS POSSIBLE. THIS OBJECTIVE CAN ONLY BE ACHIEVED BY A QUICK 'IN AND OUT' MOVE."

THE MEMO ALSO SAID WITH "A QUICK AND PURPOSEFUL STRIKE INVOLVING BOMBING AND POSSIBLE INVASION OF THE NORTH, THE VIETNAMESE WILL RESPOND WITH CLARITY AND DETERMINATION."

IT WOULD BE AN ERROR TO ASSUME A PROTRACTED CONFLICT IN SOUTHEAST ASIA WOULD BE SUPPORTED BY THE AMERICAN PEOPLE," THE MEMO SAID.

"ANY MOVE ON THE PART OF THE UNITED STATES WILL BE CRITICIZED BY A LARGE VOCAL MINORITY. THIS MINORITY WILL GROW WITH TIME, FOR IT IS IN THE NATURE OF THE AMERICAN PEOPLE WHO WISH NOT TO BE OR SEEM TO BE BELLIGERENT.

"WHEN IT APPEARS THERE ARE AMBIGUITIES IN OUR PURPOSE (AND THIS STATE OF AFFAIRS WILL SURELY EMERGE IN A WAR EFFORT ONLY ABSTRACTLY INVOLVING AMERICAN INTERESTS), PUBLIC OPINION WILL DISENGAGE THEIR SUPPORT GRADUALLY AND COMPLETELY."

AMONG THE 10 OTHER DOCUMENTS THE MAGAZINE PRINTED IN ITS 14-PAGE ARTICLE WERE SUMMARIES OF WHAT SPECIAL CIA TASK FORCES EXPECTED FROM THE SOVIET UNION AND COMMUNIST CHINA IF THE UNITED STATES INTERVENED MILITARILY IN SOUTH VIETNAM. IN BOTH CASES, THE FEELING WAS THAT THE TWO NATIONS WOULD BENEFIT FROM A LONG WAR BY EXPLOITING IT IN PROPAGANDA CAMPAIGNS AGAINST THE UNITED STATES.

MM9 35PED..

Lenny Bruce as Victim Robert Brustein

THE NEW P. 11 REPUBLIC

A Journal of Politics and the Arts — July 17, 1971, 50 cents

Nixon's Chance To End the War

The Editors

McLek

cc to
BS + LA
7/22/31

Bad Day at Black Mesa — Peter Barnes

Green Revolution — Michael Perelman

The Mylai Mentality — Daniel Ellsberg

Woebegone Florida — Robert W. Dietsch

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Vietnam War Crime

The Mylai Mentality

by Daniel Ellsberg

As a peacetime Marine in the 1950s, I was spared the need to confront the possibility that the enemies I was being trained to kill for my country might turn out to be women, children, and babies. I was surrounded then by people who had been in World War II and Korea, and I was trained on war stories of jungle fighting on isolated Pacific islands. These are the myths that have affected the attitudes of this generation of Americans toward violence. Vietnam, of course, has raised questions which this mythic history did not force us to confront – questions about who we are and what we are trying to do and what is permissible to us.

The first point I would like to raise about Mylai is this: If there were no Mylais, no face-to-face killing of women and children by small arms, would the civilians of South Vietnam really know the difference? As you may have noticed, the South Vietnamese civilians, let alone their leadership, did not really raise much protest about Mylai or even show much interest in it. First of all, they are used to such operations in that area – particularly by Koreans, the allies we brought to Vietnam.

Moreover, it is hard for the South Vietnamese to get very excited about killings committed in that particular way, knowing that nearly all of the enormous number of civilian deaths are caused by high explosives from our planes and artillery. They have come to expect these deaths, the killing of women and children from a distance, as a part of the American way of war.

The question remains, how did this particular face-to-face massacre come about? Is it the nature of this war? Is it inevitable in this sort of war? These questions have all been raised. I would suggest that it is in the nature of this war and to be expected. This is the major reason I have concluded that the war in which I participated is one we should not have been fighting.

DANIEL ELLSBERG, who has acknowledged providing the Pentagon Papers on the history of US involvement in Vietnam to The New York Times and other newspapers, made the accompanying remarks during a congressional seminar in February 1970. Mr. Ellsberg's statement is excerpted from War Crimes and the American Conscience, edited by Erwin Knoll and Judith Nies McFadden, published by Holt, Rinehart and Winston.

But the cause, I would suggest, is not so much strategic or tactical in any objective sense, but psychological, in terms of the pressures that this war puts on those who participate in it. These pressures lead daily to smaller, unrecorded atrocities, but sooner or later they were likely to produce a Mylai.

The first thing to be mentioned is the frustration to both planners and soldiers of fighting in a war where nothing seems to work, where the rules either don't exist or obviously don't apply, and where they are confronted by impotence and failure day after day. Mylai had to be destroyed not because its occupants posed any threat, but because there was a felt need to destroy some village like it.

I saw that kind of frustration and the effects of it very vividly toward the close of my two years in Vietnam. I saw it develop in a short period – only ten days – in a particular battalion which had been fighting for some months in the jungles of War Zone C where there were no villages. Now the same battalion was exposed to the conditions of the Delta, surrounded by villages and surrounded by water – in fact immersed in water constantly, which added to the frustration. The men preferred the dry jungle fighting.

As days went on in which the men were fired at by invisible snipers, losing casualties at a considerable rate but never having the satisfaction of a body to add to their statistics or to give them evidence that they were having an effect, they grew increasingly angry. The only body they encountered in this ten-day period was that of an eighteen-year-old girl killed by a stray artillery shell.

At this point I took a very odd photograph of a soldier, furiously bayoneting a canteen. His lieutenant had just asked for permission to burn an empty house that we had come to and were searching. Because it had this canteen in it and a picture of someone in a uniform that was not familiar to our troops, they assumed it was a Vietcong house and asked for permission to burn it. Permission was denied. There was much swearing and stamping around, and the soldiers took the offending canteen and punched it full of holes. Their desire to burn the house was in part the result of frustration and in part reflected the fact that they honestly didn't know what might work. They had the feel-

ing that at least if they burned the houses, something would happen; their presence would have been marked. Perhaps the Vietcong would be discouraged from operating in that area, though there were many houses, thousands in the area, and unless you burned them all, the Vietcong would still have shelter.

A week later I was on a patrol that burned every house it came to. I assumed the orders had been changed. When I returned to the battalion headquarters, I asked the operations officer why he had changed the orders, but he denied they had been changed. I said, "You can see the smoke over there, can't you?" Pillars of smoke were rising. He replied, "Sure, I see that smoke. I called the company commander and asked him what the smoke was and he said they were burning the thatch off bunkers." I said, "They were burning every house they came to." He said he would do something about it. Within ten days this battalion had moved to a state of mind where lieutenants and captains were burning houses in violation of higher orders and lying about it.

The understanding of Mylai has been distorted in some accounts I have read by the suggestion that something like this probably happens all the time. This may be true, on a smaller scale, of the Koreans, but is not really quite true of our troops. Mylai was beyond the bounds of permissible behavior, and that is recognizable by virtually every soldier in Vietnam.



"We only committed slaughter - you're guilty of indiscretion."

They know this is wrong: No shots had been fired at the soldiers, no enemy troops were in the village, nobody was armed. The men who were at Mylai knew there were aspects out of the ordinary. That is why they tried to hide the event, talked about it to no one, discussed it very little even among themselves.

But if Mylai was still exceptional, it was separated only by a very fine distinction from incidents that occur regularly and that are regarded as permissible. A few shots from the village, a few uniforms found in a hut, a measure of resistance, would have removed any question about what happened at Mylai. We operate on the principle that any action is permissible against a foe - even if he is a thirteen-year-old boy who is carrying a rifle - or even, when we come to strategic bombing, against anyone whose death might inconvenience a foe.

I am reminded of the occasion of my first sight of an alleged enemy in Vietnam. I was flying over the Plain of Reeds with a pilot who had a deserved reputation for daring and acuity; he could spot fox holes and bunkers and what-not from a great height, long before I would have seen them. At one point in the flight he told me over the intercom, "There is a VC down there." At his suggestion, I had brought a weapon with me, in case we were shot down. As soon as he spoke, I drew my pistol. He pulled out his M16 rifle and went into a dive. I looked down and saw two men in black pajamas on the ground, apparently running away from a boat nearby. I noticed that they were not armed, and mentioned this to the pilot. He said he assumed they had left their weapons in the boat. He came down again, firing the M16 from the moving plane at fairly close range, fifty to one hundred feet. The maneuver was repeated for the next twelve or fourteen minutes. While we were coming down at the men, they would lie on the ground; when we moved off, they would get up and run. We would come down again, dive at them, and fire the rifle. Finally he pulled off, without hitting them, and I asked, "Does this happen often?" "All the time," he said. "Do you ever hit anyone in this way?" I asked, and he replied, "Not very often. It's hard to hit anybody from a plane with an M16, but it scares the shit out of them. They will be pretty scared VC tonight."

I asked him how he knew they were VC and he answered, "There's nothing but VC in the Plain of Reeds." The Plain of Reeds was a free-fire zone, which meant we had condemned to death all those who might be found in it. I was later told that there were almost two thousand fishermen in the area who continued to fish during our attacks.

This game, this hunt, is something that goes on daily in almost every province of Vietnam. I am sure the Vietcong will come out of this war with great pride in the fact that they confronted American machines and survived. I came out of that plane ride with a strong sense of unease.

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Ellsberg Wins Delay on Coast Trial

By JOSEPH LELYVELD

Special to The New York Times

BOSTON, July 15—Issuance of an order requiring Dr. Daniel Ellsberg to go to Los Angeles to stand trial in connection with the Pentagon papers was put off for at least eight days today as his lawyers sought to show that the Government's case against him was based on illegal wiretap evidence.

The Government contended that the issue of wiretapping was properly the business of the Federal District Court in Los Angeles, where the former Defense Department official was indicted on June 28 on charges of having stolen Government property and having had unauthorized possession of documents "related to the national defense."

But Magistrate Peter A. Princi ruled here that Dr. Ellsberg's lawyers could have until Friday of next week to file a further brief to support their contention that the question of wiretapping must be settled first, in order to determine whether the case should be allowed to proceed.

The indictment focused on Dr. Ellsberg's actions in September and October of 1969, when he was working for the Rand Corporation, a Government-supported research organization in Santa Monica. The indictment made no reference to Dr. Ellsberg's statement that he had transmitted the Pentagon study on the Vietnam war to the press.

Appearing on behalf of Dr. Ellsberg, Leonard B. Boudin stated that the Safe Streets Act of 1968 required the Government to divulge "in any trial,

hearing or other proceeding" whether the defendant, has been the object of illegal surveillance.

A disclosure of wiretapping, he maintained, would lead automatically to a hearing on whether the charges should be dropped because they are based on "tainted" evidence.

Lawrence P. Cohen, an Assistant United States Attorney, argued that a Federal Court here had no authority to drop charges brought in California.

Sees Untenable Position

He said a disclosure of illegal surveillance would put the Government in the untenable position of having to present here all the evidence it presented last month to the Federal grand jury in Los Angeles.

Seated next to Mr. Cohen at the Government table but not participating in the arguments was Paul A. Vincent, a white-haired lawyer from the Justice Department's Internal Security Division who presented the Government's case to the grand jury in Los Angeles.

However, Mr. Vincent has reportedly been presenting evidence to a Federal grand jury here in an attempt to secure the indictment of Neil Sheehan, The New York Times reporter whose investigative reporting led to the publication of the Pentagon papers.

The Times has never discussed its sources for the documents, but Dr. Ellsberg asserted at a news conference on July 1 that he had given material to all newspapers that published parts of the study.

Dr. Ellsberg, who is now a research associate at the Massachusetts Institute of Technology, looked drawn and composed as he followed the legal

arguments during the 45-minute hearing this morning. His wife was seated 15 feet behind him.

As Dr. Ellsberg and his wife arrived at the Post Office Building, which houses the Federal Courts here, they became the object of a one-man demonstration by Josef Mlot-Mroz, a self-styled "Polish freedom fighter" from Salem, Mass.

The solitary demonstrator carried a wooden crucifix about six feet high, which was painted white and bore the slogans, "Communism Is Jewish" and "Fight Jewish Communism."

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 Holmes ☒
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TV KEY PREVIEWS

All-Star Baseball Game. Live from the Tiger Stadium in Detroit, NBC offers prime time coverage of the 42nd annual All-Star Baseball Game tonight. 8 p.m. WRC-4.

The Movie Classics of David O Selznick. "Made for Each Other." (1939.) Very good drama starring Carole Lombard and James Stewart, which is likely to bring tears to the eyes of the ladies in the audience. It concerns a young married couple whose in-laws very nearly cause a smash-up in their lives. 8:30 p.m. WMAL-7.

All in the Family. (Repeat.) Head of the house Archie is up to his neck in racial problems tonight. While he's hustling petitions to keep blacks out of the neighborhood, wife Edith accepts a family invitation to dine with Lionel's parents and they're not white. 9:30 p.m. WTOP-9.

Artists in America. "Roberta Flack." If you've never heard Roberta Flack perform, this half-hour will prove to be a magical experience. The moment she begins to play the piano to accompany herself in song, her art comes to life and you are transported and inspired by her magnetism. 9:30 p.m. WETA-26.

CBS News Special. "The Pentagon Papers: What They Mean." CBS correspondents Bernard Kalb and Marvin Kalb will be the anchormen for this round-table discussion on the content, substance, and importance of the Pentagon Papers, marked secret, until they were leaked to the New York Times, which made parts of them public. Participating guests will include government officials, historians, and journalists. 10 p.m. WTOP-9.

Marcus Welby, M.D. "The Windfall." (Repeat.) Here's a poor-little-rich-girl plot about a daughter who develops an ulcer because she feels unloved by her busy parents. Welby and Kiley quietly try to bridge the generation gap, repairing emotional and physical damage, and the two of them deserve a pat on the back. Alexis Smith and Craig Stevens play the wealthy parents. 10 p.m. WMAL-7.

Dick Cavett Show. Daniel Ellsberg, the principal source from whom the Pentagon Papers were given to the New York Times and other papers, is the sole guest of the Cavett Show tonight. 11:30 p.m. WMAL-7.

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 The Sunday Star (Washington)
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 The New York Times
 The Daily World
 The New Leader
 The Wall Street Journal
 The National Observer
 People's World

Date **JUL 13 1971**

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NATIONAL BROADCASTING COMPANY

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JUNE 30, 1971 - A DAY FOR HISTORY
THE SUPREME COURT AND THE PENTAGON PAPERS

10:00 p.m. WEDNESDAY, JULY 1, 1971

GUESTS:

SENATOR HENRY JACKSON (D. Wash) Senior Member,
Senate Armed Services Committee

WILLIAM McCOMBER, Deputy Under Secretary of State

D.E. MAX FRANKEL, Chief, Washington Bureau, New York Times

BENJAMIN BRADLEE, Executive Editor, Washington Post

PANEL:

James J. Kilpatrick, Washington Star Syndicate

Kenneth Crawford, Washington Post

Martin Hayden, Detroit News

Carl Stern, NBC News

MODERATOR:

Edwin Newman, NBC News

This is a rush transcript provided for the information and convenience of the press. Accuracy is not guaranteed. In case of doubt, please check with

MR. NEWMAN: Good evening, I am Edwin Newman,

The United States Supreme Court today ruled against the government and gave the New York Times and the Washington Post the right to resume publishing the secret Pentagon study on United States involvement in the War in Vietnam.

The Justices divided six to three. Some members of the Majority said that the government had no right of any kind of restrain the press from publishing. The others said the government did not make out a sufficiently convincing case that national security would be damaged by publication of the Pentagon Papers.

The three Justices in the Minority argued that no harm would have been done by further hearings to see whether national security would be damaged. Chief Justice Burger said there was so much haste the court did not know what it was voting on.

The country now faces the question: What are the implications of today's decision; what will it mean to the government, to the press, to the American people, and to our national security.

Here to answer questions put by a panel of reporters are four men closely associated with the issue. William B.

McComber, Deputy Under Secretary of State; Senator Henry Jackson, Senior Member of the Senate Armed Services Committee; Max Frankel, Chief of the Washington Bureau of the

New York Times, and Benjamin Bradlee, Executive Editor of the Washington Post.

I will introduce our panel of questioners shortly.

I want to begin by asking each of our four guests what are the implications of today's decision as you see them?

Mr. McComber?

MR. MC COMBER: Well, I think they are very far-reaching and I have not come on this program to argue the case all over again, but I do think much now depends on the restraint shown by the press and I hope very much that even though we have lost our ability to enjoin the press, I hope the very narrow elements in these volumes, the very small percentage of the volumes we have been seeking to enjoin, I hope that the press themselves will show restraint in the national interest in connection with that very narrow range of documents we are trying to keep out of the press.

MR. NEWMAN: Senator Jackson?

SENATOR JACKSON: Well, I think what the court said, that is, the majority of the court, said that in this case there was not sufficient evidence to warrant the granting of an injunction, and this was the specific issue before the court. The court is saying that there must be a showing of irreparable harm to the Government of the United States, and the majority of the court felt that the Government failed to establish that fact.

MR. NEWMAN: And the implication of that as you see it is what?

SENATOR JACKSON: Well, the implications that flow from this leave a lot -- well, shall we put it this way: There are more questions unanswered than answered. I think very clearly the Congress has a special obligation to move rapidly with a joint hearing, I hope in the Senate, to fill in the voids and to try to come up with some appropriate legislative answers in this area.

MR. NEWMAN: Mr. Frankel.

MR. FRANKEL: The worst implications for a reporter is that he should find himself on this side of the table, of this kind of a colloquy. Government speculatively and broadly, not narrowly, shouting that the national security was endangered, dragged us into court, silenced one newspaper after another for the first time in 200 years in this country. I regard that as ominous despite our victory. I am only happy that the majority of the Supreme Court agreed with us that (1) there was no such harm to the national security and (2) whatever damage may be presumed to flow from this case and from the publication that it is as nothing to the damage done by gagging free speech in this country.

MR. NEWMAN: Mr. Bradley.

MR. BRADLEE: I think the implications are that the

government cannot restrain a newspaper even though it did so, cannot restrain a newspaper from publishing before the fact, and I think the implications are that the government cannot restrict a newspaper to publishing only that material which it okays, and I think that is a victory for the world.

MR. NEWMAN: Thank you, gentlemen.

(Announcements)

* * * * *

MR. NEWMAN: We are ready to continue this NBC News Special Report on the Supreme Court and the Pentagon Papers.

You have met our guests. On our panel of questioners tonight are Carl Stern of NBC News, Martin Hayden of the Detroit News, James J. Kilpatrick of the Washington Star Syndicate, and Kenneth Crawford of the Washington Post.

We will continue the questions with Mr. Stern.

MR. STERN: Mr. McComber, now that the event the dreaded Administrations has arrived at the Post and the Times and others will be free to print the Pentagon Papers, can you tell us with a little more precision than we have heard so far what adverse things you expect will happen to the U.S.?

MR. MC COMBER: Well, I hope ^{that the} most adverse things will not happen because I hope very much we will see some patriotic restraint on the part of the newspapers and I have reason to hope that we will. I think it is awfully important for the American people to understand that we were not trying to

prevent the publication of all 47 volumes, 7,000 pages.

What we are in court trying to prevent is a very small percentage of that; four volumes out of the 47, and I believe those volumes probably were the ones Mr. Ellsberg censored. In other words, what is left amounts to about, oh, 60-odd documents that the State Department has cited and some 30-odd documents the Pentagon has cited. That is a very small percentage of the 7,000 pages.

Now, the reason we have asked for these particular ones is that they do -- their exposure will do real damage to the diplomatic, military and intelligence operations, current operations of the United States Government, and I would hope that, from the point of view of patriotism, that the papers will refrain from printing those very narrow documents that we are citing.

MR. NEWMAN: Mr. McComber, would you explain what you meant by Daniel Ellsberg's censoring?

MR. MCCOMBER: I don't know that he did it, but I read in the paper he said there were four volumes that he held back. Now, from what he said, we believe they are the same four volumes that we have cited and they have to do with the negotiations to end the war. Other things have to do with the most delicate kind of activities in connection with our POWs.

You know from the beginning of the republic there has

been this struggle and conflict between the First Amendment and the necessity of the President to protect the national security.

Thomas Jefferson is the author of the First Amendment. He practiced secret negotiations. I do believe this government can protect the First Amendment and all that stands for, but I believe there is a narrow area where all patriotic Americans are going to protect the security of the United States.

MR. STERN: Do you think that Mr. Frankel there and Mr. Bradlee are unpatriotic?

MR. MC COMBER: No, sir, that is why I think we are going to find a way here not to reveal the things that are really of crucial value to our opponents in the world.

MR. STERN: What do you think? Were they misguided or what is the problem?

MR. MC COMBER: I think they were fighting for a principle, they thought it very important and it is a very important principle. I only wish I had the eloquence to speak to the other principle that is in conflict here because everybody in this business has been sincere. We don't doubt the newspapers' sincerity and it certainly has not been a popular, or easy thing for the government to do, but we believe the free government depends not on the first amendment alone, it also depends upon our ability.

in a very dangerous world. Obviously we have got to be very narrow and restricted in that and there are a lot of things that are going to come out that are awkward, that are embarrassing. We are not trying to protect that. We wish that wasn't going to happen. The kind of things I am talking about, the kind of things we have cited in the injunction are going to do real damage to the ongoing intelligence, diplomatic and military operations of the United States.

MR. HAYDEN: Senator Jackson, you state that the next step now is for congressional hearings -- presumably by your committee; maybe some others -- to decide what legislative action should be taken. Now, do you mean by this that you are going to take these papers as a basis for an investigation to decide how we got in the Vietnam war?

SENATOR JACKSON: No, I think the issues raised by these papers should be subjected to careful cross-examination and interrogation. We ought to find out who the authors are, what they base their opinion on and so on. I think they are incomplete documents. That is the first thing that needs to be done.

I feel very strongly that with the growth of government that obviously we have to find a mechanism, some action-forcing device to cut down on the volume of classified material. We are getting so much classified material that

there is the danger of information that is extremely sensitive being thrown out with the bath water, so to speak. This bothers me.

In addition, there are other areas that are not covered in this case, or by the court opinion. I believe there are some conflicts here on the First Amendment. I lived through the McCarthy period and was very active against the late Joe McCarthy when the members of that staff were taking memoranda out of the files of the State Department and, of course, using it to attempt to destroy the character, integrity, of faithful servants within the State Department because they entertained views that were unpopular. It seems to me if we are going to preserve the right of dissent and freedom of speech, there has to be some way too when we talk about this broad problem, how we can protect the integrity of individuals who can play a very important role of dissent.

Now, should those documents be made public? I think this raises a very serious question.

Now, if the doctrine is to be -- and I don't know the answer -- that you can make anything public that you get your hands on, then I believe there is a real danger that the operation of the government in some very important areas can be damaged because in the name of the First Amendment you can really deny through fear the right of an individual to speak his mind, lest he lose his job and fear, for all practical

purposes, is the most devastating means of depriving one of his constitutional rights. If he fails to speak out because of fear, he has been denied the First Amendment.

MR. HAYDEN: Well, Senator, you mention the McCarthy era and I remember your attacks on the Senator and one of the things you complained about was his taking out of old files messages from diplomats and soldiers and bringing them into a context of ten years later -- this had reference to the fall of China.

It could seem that some of the same procedure has been followed in this case, but I don't hear anybody standing up in the Senate to defend the men who in the early days of the Vietnam War made the recommendations which now manifestly are so unpopular.

SENATOR JACKSON: I am not so sure that this situation is on all fours with the period that we are talking about. The problem here that the court had to pass on was in a different context, but it does raise this whole question of privilege; it does raise the question of what can be published and what cannot be published and it seems to me that there is a need for a little common sense in all of this if we are going to make government work and be effective.

MR. KILPATRICK: Mr. Frankel -- I have to call you Mr. Frankel since you are over on that side tonight -- Mr. Frankel, it has been widely published and in fact admitted by the

defendant in the case that Dr. Ellsberg was the source of the documents provided to the New York Times. Are you prepared to confirm that Dr. Ellsberg was the source of the New York Times?

MR. FRANKEL: No, I am not prepared to confirm that.

MR. KILPATRICK: This is top secret at the Times?

MR. FRANKEL: It is.

MR. KILPATRICK: Are you aware of whether any compensation was paid to the source?

MR. FRANKEL: The New York Times has never paid compensation to any source.

MR. KILPATRICK: The New York Times is a very generous newspaper. It would not even have reimbursed him for his Xerox expenses or his long distance fees or anything of that kind?

MR. FRANKEL: I don't know who Xeroxed what in this case, but the New York Times has never paid for information except to the extent that as our government friends can testify in Washington we occasionally take them to lunch.

MR. KILPATRICK: Were these documents brought to you -- brought to the Times -- back in March out of the clear blue sky or had the Times known in advance of them and solicited them?

MR. FRANKEL: As we have said, they were obtained through the investigative reporting efforts of Neil Sheehan

a wonderful repository.

MR. KILPATRICK: I am not certain that is altogether responsive, if you will forgive me. Did the Times actively solicit these documents?

MR. FRANKEL: We knew that they existed before we saw them and we hoped to get them, yes.

MR. KILPATRICK: You asked someone then to provide them to you?

MR. FRANKEL: We looked for them.

MR. KILPATRICK: Mr. Chief Justice Burger, in his dissenting opinion, has described these as purloined documents. Is that a fair description?

MR. FRANKEL: I don't know. They are not purloined as far as we are concerned.

MR. KILPATRICK: What was the assumption of the Times when the documents came into its hands, that they were authorized or unauthorized?

MR. FRANKEL: Authorized in terms of the sources from which we got them?

MR. KILPATRICK: Yes.

MR. FRANKEL: We made no assumption.

~~MR. KILPATRICK: You made no assumption at all?~~

MR. FRANKEL: No.

MR. KILPATRICK: As to whether these were in fact purloined or --

MR. FRANKEL: I don't know. I mean to the extent that Dr. Ellsberg has said he was involved with some dissemination and leaving the Times out; he, for instance, is also one of the authors of parts of these documents. Whether if he therefore had them, in terms of whether he was authorized to have any part of them or not, I don't know. Presumably a man who writes something has certain rights to retain parts of what he writes.

MR. CRAWFORD: Mr. Bradley -- it seems a little strange to be cross-examining you, but I will do it anyway.

I trust you, and I trust Mr. Frankel not to print anything that would be injurious to the security of the United States, but I put this to you. You know some publications and some editors you wouldn't trust as far as you could throw a printing press, and so do I. Now, what does this decision do to them?

MR. BRADLEE: Well, I can't speak for them. I am boiling over still at something Mr. McComber said. Could I just -- You said, Mr. McComber, that the government was seeking to enjoin a very small part of these documents. That is not a fact. The government stopped two great newspapers dead

in their tracks with the assertion under oath in court that the publication of any part of those 47 volumes would do such irreparable harm and so damage the security of the United States that they had to be enjoined. Now, that is what they

said. They said in the lower court, the said it in the Appellate Court and we got to the Appellate Court you began to shop a little. You began to say "Okay, maybe most of it should be declassified" and you stopped -- not you, the Justice Department stopped two newspapers.

As far as the implications for other people, we have acted on the assumption all along that these documents are widely disseminated.

You will remember that the Chicago Sun-Times, when it published its documents, said that its source was the Committee to End the War on Vietnam. Now, I don't trust every one of those either, but, if they have got them, I don't see why anybody can hold the New York Times or the Washington Post responsible.

MR. CRAWFORD: Mr. Bradlee, do you concede that the government does have some legitimate areas of secrecy?

MR. BRADLEE: I think they have enormous and complete right to define those areas and to defend the security.

MR. CRAWFORD: Do you think they can do it under this decision?

MR. BRADLEE: Of course they can. The areas of security are --

MR. CRAWFORD: But not by injunction?

MR. BRADLEE: Not by injunction, and I think that they can classify any document any way they want. They can classify

it top secret, no secret, confidential, and that is their right. Their duty, I would suggest, is to keep that classification, to keep it secure.

MR. CRAWFORD: But, Mr. Bradlee, we had a case during the Second World War where a middle western newspaper, a responsible newspaper, printed a story which showed quite clearly, if it were read by anyone in the know, that we had broken the Japanese code. Now, wouldn't you think that in a situation like that, that newspaper, had you known it had it, ought to be enjoined from using it?

MR. BRADLEE: Oh, gee, Ken, this is a long time ago. I don't think I would have done it, but I don't know the circumstances. They did not publish it.

MR. CRAWFORD: I am sure you wouldn't have done it. The point I am trying to make is that there is a situation -- there can be a situation in which it would seem that the injunctive process would be the only way of stopping something that might do the country tremendous damage.

MR. BRADLEE: But the injunction process is based on the presumption that we will commit a crime. The statute says if you do all of these things you will be -- and we haven't yet, and there is a presumption that we are going to.

MR. CRAWFORD: I am thinking about the problem of somebody who might. I agree that you haven't.

SENATOR JACKSON: Just a point of clarification. I don't believe the court said that

they would not enjoin a given printing of a piece of paper that would cause irreparable harm to the security of the United States. I wanted to make that clear. I don't think the court made that finding. The court said there was in effect -- they had various differing points of view as to how they reached that conclusion, but the court said there was not in effect sufficient evidence to warrant the enjoining of a publication. They point out that this is a very serious burden on the court, but the court did not say that an injunction would never lie.

Now, one of the Justices made a point on that, that there was no statutory authority.

MR. NEWMAN: I just wanted to say here there were a number of opinions that went into the majority position. The majority position found for the Times and the Post.

Some member of the majority said the government had no right to restrain the press from publishing. Other members of the majority said there would be such a right when real damage to the national security could be found.

SENATOR JACKSON: This is of course the three justices that historically say there is no limits on the First Amendment.

MR. NEWMAN: It was, as you indicated earlier, Senator, a mixed result.

Mr. McComber, you wanted to say something?

MR. MC COMBER: I don't want to boil Ben over again,

but I do want to keep the record straight that the reason we went in and sought to enjoin all the documents at first is that neither newspaper would tell us what documents they had and neither would bring them forward. We made the position clear to the Judges in the trial courts that if we could find out what they had, we could sit down with them and we could declassify the things that weren't going to do severe damage to national security.

MR. FRANKEL: Again, with all due respect, the government well knew what we had and was able to identify it. Senator Fulbright has known for two years what we had and asked the government and was specifically denied permission even to look at it.

MR. MC COMBER: It is just not right. Whatever volumes you had, you had associated documents. One of the most damaging documents that you published is not listed in any of this. We didn't know what you had and when you finally gave us a listing it was a very general listing, and we developed a general idea of what you had, but not specifically. We don't know to this day what you have got.

MR. FRANKEL: But the point that you were objecting to, that only a handful of documents, surely doesn't square even with the fact that/in secret, in confidence, no member of the United States Senate could look at this. Obviously the government was determined for year after year to keep the

MR. MC COMBER: You know that is just a statement that you cannot back up. The only way we can keep it away from the Congress is for the President to invoke executive privilege. He had not invoked executive privilege. That issue was under discussion at the time all this broke.

MR. FRANKEL: I will let Senator Fulbright fight his own battles.

MR. MC COMBER: They said to the Senator they didn't think it was appropriate. They did not say they would not do it, and that issue is being resolved and the only person in the end to say that Congress can't have it is the President of the United States and he had not made that decision and when the decision finally was made, as you know, he sent it up.

(Announcements)

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MR. NEWMAN: Resuming our special program on the Supreme Court and the Pentagon Papers, we will continue the questions now with Mr. Stern.

MR. STERN: Senator Jackson, would any useful purpose be served in your judgment for government to prosecute the newspapers and reporters that were involved in this?

SENATOR JACKSON: As far as I can ascertain, based on the information released so far, I know of no violation of a crime on the part of the newspapers.

MR. STERN: That isn't what I asked you. I asked would any useful purpose be served assuming there is a jurisdictional basis for doing

SENATOR JACKSON: I don't want to get into an "iffy" question. There is no basis for charges against any one that I know of, of the newspapers. There is no allegation that would warrant an indictment under any circumstances.

MR. STERN: As you know, Senator Gravel had a late night session last night reciting the contents of some of these documents and Senator Scott called today for the Democrats to examine the possibility of bringing the Senator up on some sort of disciplinary action. He mentioned such things as ejecting him from the Senate. What do you think?

SENATOR JACKSON: Well, the question that really arose last night related to the procedures of the Senate. I do not believe, but I do not have any information to the contrary, at least, that he disclosed information that was not authorized. The question, of course, was the holding of a hearing beyond the hours of the Senate. The Senate was out of session, and then holding a session in the middle of the night without prior arrangement with the leadership or with the chairman of the committee.

MR. STERN: That was also quite a spectacle on Monday when the senators were brought over and there was a gathering

In Senator Ellie's office and the various parties pranced around with top secret labels, like it was New Year's 1971, across their chests.

It is hard to believe these documents are all that vital and grave and hold the nation's security right in the palm of their hands when they are made light of this way by members of the U. S. Senate.

SENATOR JACKSON: Mr. Stern, you are up on the Hill a lot. The pressures are great. I was not involved in that transaction, but the pressures are great up there. The media in all forms are present and they are crowding around and they get tips as to when something is arriving. It is pretty hard to avoid taking a picture of it.

And, of course, taking a picture of a top secret label doesn't mean that you are disclosing anything. Maybe it, you know, makes a good headline.

MR. STERN: You are confident the Senate can be trusted to deal with documents such as these in the proper manner and with decorum?

SENATOR JACKSON: Well, the committees that I have served on, to be very candid, we have been fortunate; we have not had any leaks and I believe that -- I am talking now about leaks affecting the security of the United States. I believe we can do that job. There is always the danger of information getting out. The American people like to talk.

MR. HAYDEN: Mr. McComber, you probably just heard Mr. Frankel comment that a man who, I gather, had left government, had some rights to what he had written when he was in government. How does that apply in the State Department? After you leave office, have you got a right to rewrite secret reports for publication?

MR. MC COMBER: No, sir, you do not have a property right with respect to what you prepare while you are in the government.

MR. HAYDEN: What is done if someone does do that?

MR. MC COMBER: Well, we obviously have laws and the Justice Department is now proceeding.

MR. HAYDEN: In the instant case?

MR. MC COMBER: Yes. You don't take a property right with you.

The government really can't run if we are going to allow a situation where a disaffected employee can go out of the government, grabbing as much highly classified material as he can, run over and start Xeroxing it and then peddling it to as many papers as possible.

If that goes on, for instance, in connection with the SALT talks, the Strategic Arms Limitation talks, there will be no SALT talks. If that kind of stuff starts in connection with our efforts to get a peace in the Middle East, there will be no peace in the Middle East.

You know, Arabs and Israelis agree on almost nothing, but I will tell you one thing they agree on, if they are going to deal with the United States on the issue of peace out there, both sides are going to have to be able to deal in confidence and not worry about ^{whether} what they tell us will be on the front page of a major paper.

You just can't allow this and have a government operate.

MR. HAYDEN: During the argument before the Supreme Court, the attorney for the New York Times, when asked by Mr. Justice Stewart whether a newspaper would be justified in publishing something that was actually damaging said, no, that he didn't --he said he thought they could not be restricted and he said he would wish Congress would take a look at our espionage acts which he said aren't in very good shape, and clean them up.

Now, many newspapers are wondering, is the Administration going to propose a cleaning-up of the espionage acts and have perhaps an official secrecy act such as they have in England?

MR. MC COMBER: I can't say what the Administration is going to do. This thing just happened today. I think they are going to move in two directions. I think they are going to try to find ways to get material which no longer needs to be classified, to get it declassified and get it out.

The State Department accumulates 400,000 classified messages a year and obviously the job of pushing that out is a very difficult one and things stay classified that don't need to.

On the other hand, we have got to do a better job of protecting vital secrets of the United States and, important as the First Amendment is, so is diplomacy in this very difficult time. You are just not going to get peaceful resolution of disputes if we can't keep our mouths shut.

Perhaps if we could talk only to the American people, we could tell a lot of secrets, but there is no way you can talk only to the American people. Other people listen in.

MR. KILPATRICK: Mr. Bradlee, the Post is resuming publication tonight of stories based upon documents described as secret documents. Where did you get the documents?

MR. BRADLEE: I am not going to comment on that.

MR. KILPATRICK: That is top secret again for the Post?

MR. BRADLEE: It is confidential.

MR. KILPATRICK: Whether you got them from Dr. Ellsberg or from the New York Times or from any source?

MR. BRADLEE: We did not get them from the New York Times.

MR. KILPATRICK: The same question I asked Mr. Frankel earlier: Did you pay for them?

MR. BRADLEE: No.

MR. KILPATRICK: Not any compensation of any sort?

MR. BRADLEE: None of any kind.

MR. KILPATRICK: In his dissenting opinion, Mr. Justice Harlan said the question should have been faced whether the newspapers are entitled to retain and use the documents notwithstanding the seemingly uncontested fact that the documents or the originals of which they are duplicates were purloined from the government's possession and that the newspapers received them with knowledge that they had been feloniously acquired.

What would be your response to that question that Mr. Justice Harlan thought should be raised?

MR. BRADLEE: I am less interested in the sources than in the substance. If we had to examine the motives of our sources, you and myself would spend an awful lot of time on non-productive --

MR. KILPATRICK: I am asking the questions now and I am more interested in the sources than in the substance right now.

MR. BRADLEE: I am more interested in the substance than the sources. I think once you gain -- every source has a motive.

MR. KILPATRICK: Did you have any moral compunctions about using this material?

MR. BRADLEE: After the authenticity was ascertained and after we made the judgment that the security of the United States was not -- no kind of harm was done to that.

MR. KILPATRICK: You never went through the faintest flicker of a feeling that these ought to be returned to the government?

MR. BRADLEE: I did not.

MR. CRAWFORD: Mr. Frankel, do you believe that anyone who had read the Times and the Post carefully and attentively and other reading in the area of foreign affairs, would have found anything essentially new in what you printed?

MR. FRANKEL: Oh, yes. I don't think we would devote six pages a day to something we regarded as old hat.

MR. CRAWFORD: I rather think you did, but why do you think you didn't?

MR. FRANKEL: What this story tells us above all -- and I am glad we are down to the essence of it, and the substance, as Ben said -- this story is a history of decision-making. This is why there are no real military secrets in it, because both the authors and certainly the reporters and editors that we put to work on it were interested in how this government reached a series of fateful decisions that have racked this country now for a generation, and the biggest story of all is that four successive administrations took this country into a series of commitments that at every

stage were far deeper than anyone was ever told at the time, that they then took us progressively into a shooting war, than anyone was ever told publicly at the time, and, moreover, that they then discovered that the whole enterprise was failing and was disillusionment before they ever shared that knowledge with anyone and the whole point of this whole exercise in the courts is made so meaningless because we are now being asked, or we were in the courts, to yield to the judgments of government officials that had dared to take these fateful decisions out of the public domain, that had taken us into war and now again out of it, that had decided it was a bust, without ever sharing that knowledge and that information with the Congress or the people, and then we were being asked to trust those same people now to decide when you shall read about it.

That is the substance, and you don't print it, but wait until President Johnson and his contemporaries write their memoirs from the same classified material and let them feed you their version of what happened, but never you mind looking at the original source material. That is the outrage of this situation.

MR. MC COMBER: Max, it really isn't just history. If it was just history, we wouldn't be here arguing over this. I agree the part that is history should come out, even where it may be awkward and may be embarrassing. It is

more serious than that.

Mixed in with these documents is information that revealed it is damaging to current operations of the United States Government and although I know both of you are honorable men and want to do right, but what I would like to say to the American public is I don't think editors sitting in a newspaper have enough information to make this judgment about whether it is harmless or not, because you don't know what we are doing in Hanoi right now through third parties and whether what you print is going to mess that up and whether that is going to delay ending the war. You don't know what else may be going on that may set back our efforts to alleviate the conditions of our POWs. You just don't have that information and therefore you should not, even though you are honorable men, take these judgments onto yourselves.

MR. FRANKEL: Let me just say one personal word, and that is this is essentially an unfair proceedings because I, both you and Mr. McComber are bound by the courts for the moment, with still getting into the substance of those objections, but I hope before not too long as our original Judge in New York suggested he had heard nothing in the secrets of this trial that couldn't be made public. I hope before long the very specific fears and documents that you are talking about, we will be allowed to talk about them in

public and the public can judge, but, beyond that -- let me assume for a minute there is some diplomatic inconvenience and there is even some diplomatic damage. I don't grant it, but let's assume that.

The fact is that that is now in the scales and has been since the First Amendment was written, against the outrageous damage that is done when free speech and free press are curtailed. The founders --

MR. MC COMBER: The authors of the First Amendment practiced secret diplomacy. Thomas Jefferson practiced it --

MR. FRANKEL: Of course they practiced it as long as they could and when the word got out it was out. And the fact is, of course, that long before these documents came into our hands or the Post's hands, so many other people had them that you had to assume that the secret was out anyway, and whatever you had to adjust to, you had to adjust to.

MR. BRADLEE: I can only say without giving away the en camera part that the first government witness to come up with his best case of what dreadful damage would occur if these documents were published, we found 18 public citations of this instance. Eighteen. You were not in court at that time.

MR. MC COMBER: I understand, Ben, but now you know other judges who have heard this have said there will be

serious damage. They found that.

MR. BRADLEE: Could be. Could be.

MR. MC COMBER: No, will be. In the Supreme Court you have two justices who said will be and they are both ones who found against the government today.

MR. BRADLEE: It is an assumption that we will print it.

MR. NEWMAN: I think as the judge presiding here I will bring this particular exchange to a close.

Mr. Crawford, have you another question for Mr. Frankel?

MR. CRAWFORD: Mr. Frankel, doesn't it bother you a little that this, particularly, it seems to me as the Times handled it, has become sort of a perfidy hunt? You take the atmosphere in 1964 and 1965 when it seems to me the American people would not have willingly permitted precipitate withdrawal from Vietnam and you judged the people who made those decisions in the atmosphere of 1971. Doesn't that bother you a little?

MR. FRANKEL: Of course it bothers me, especially since I have a strong sense of affection and kinship with the people and I shared many of their same attitudes at the time, but I think you are very wrong in suggesting that the way the Times handled it -- we presented this in the first instance without any analysis of our own; we presented it as an official government history done in the Pentagon by 35 hand-picked men at the behest of a Secretary

of Defense, and reported on their findings and offered what we regarded as some of the most germane texts that were included so that the reader could begin to make up his own mind.

There has been a lot of hullabaloo here that we have made judgments that Johnson lied or that McNamara lied or this or not. The fact is we didn't. We tried to present the best repertorial and objective account of the Pentagon history; we conceded that it was incomplete and flawed, and to Mr. McComber's suggestion that it is incomplete, of course, I second it. If he wants to complete that record and give us the rest of that stuff, we will be delighted to print it.

(Announcements).

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MR. STERN: Mr. Bradlee, in looking through the documents and deciding what you would publish and what you would not, did the Washington Post find anything too hot to print?

MR. BRADLEE: We felt we would be more responsible not to print certain things, yes.

MR. STERN: Like what and how did you make that judgment?

MR. BRADLEE: Oh, come on.

We made that judgment on the basis of responsibility.

MR. STERN: What are we talking about? What is our

standard? Are we talking about troop movements, diplomatic codes? What are we talking about? What's too hot?

MR. BRADLEE: Well, both of those I would have -- I would have considered troop movements -- I mean Joe Alsop publishes troop movements; there is no secret there any more, but codes, anything to do with cryptography, I would consider, I would approach very gingerly.

MR. MCCOMBER: But you are not in a position to know whether you are dealing with cryptography?

MR. BRADLEE: Oh, I think I am. I used to decode messages.

MR. MC COMBER: This thing has gone way beyond those days.

MR. BRADLEE: I suspect you are right.

MR. STERN: But that's it, though. You are being challenged by these gentlemen to explain your standard and I am asking you the same question.

MR. BRADLEE: We are being challenged on the basis of what we might do and that is where I part company with all of them.

I can envision a lot of things -- unfortunately the things I can envision most quickly are the ones where we did exercise this judgment and I am not going to share them with you.

MR. STERN: Should the Post possess documents that are

too hot to handle.

MR. BRADLEE: Well, if the Committee for the Freedom to End the War in Vietnam has them, I would just as soon have the Post have them.

MR. KILPATRICK: It is my turn, I believe, to ask Senator Jackson a question and I will. If you had been President of the United States on the morning of June 13th and you had walked out to the front door of the White House and picked up the Sunday Times and seen the stories, what would you have instructed your Attorney General to do the next day?

SENATOR JACKSON: I would have asked to obtain an injunction.

MR. KILPATRICK: Then you approve the injunctive process?

SENATOR JACKSON: I approve that process as a means of finding out what is involved. I am sure the President of the United States really didn't know what was involved in these documents. Few in the government did. But the point I would make is that it would not cause irreparable harm to the newspapers; it would be a status quo operation. Get the facts and then let the court decide whether it was warranted.

Frankly, I have no quarrel with the court's decision. I want to make that very clear. I don't think the government

proved its case, but the injunction process is a good means of maintaining the status quo, Mr. Kilpatrick, until you find out what the facts are, and I see no harm in that procedure.

MR. KILPATRICK: You see no harm in it at all in the government acting through the courts to prevent a newspaper publishing this or this or this for some indefinite period?

SENATOR JACKSON: Which on the -- well, no, till the court can hear the case on the merits.

MR. KILPATRICK: But which may be a period long past the time when this is the news.

SENATOR JACKSON: Well, look, I don't think any of the newspapers have lost any of the news value, with all this build-up even tonight they are going to sell more papers than ever.

MR. KILPATRICK: Isn't this a conclusion that you reached that you have no more right to reach as a Senator -- and to go back to Mr. McComber -- my friends over here have to reach a newspaperman about these documents.

SENATOR JACKSON: No, a President of the United States in effect after all is/ the chief law enforcement officer through his cabinet officer, the Attorney General, and has a responsibility under the Constitution to see that the laws are faithfully executed.

MR. HAYDEN: Mr. Frankel, you recently defended -- just

defended your publication of this, that the people had a right to know.

MR. FRANKEL: I didn't use that phrase, but --

MR. HAYDEN: In a recent Newsweek article Joe Alsop recalled that several years ago he wrote an article for the Saturday Evening Post describing what happened in the National Security Council at the time of the Cuban missile crisis. I am sorry, Stewart.

At that time the New York Times assailed it, called it a breach of security; wanted to know how the President could ever get advice if this kind of practice was continued.

How is it different from what you have done?

MR. FRANKEL: In one sense it isn't different and I don't know who wrote that editorial, but I ^{wouldn't} subscribe to it. I frequently don't subscribe to our editorials but beyond that the difference is really here in this case one of tremendous magnitude. That particular leak -- and I welcome it because I think any information about the decision-making process is welcomed, but it was really a very partial leak. That is, certain people were represented as hawks and doves in a very particular, narrow debate and we didn't get much at all about the full sweep of the decision that was in fact being made.

What we are talking about here is a whole history.

Maybe flawed, maybe incomplete, but a full sweep of history

on four administrations and how we did it with no effort,
no effort even by the authors of this document, to cast blame.

They were trying, as sympathetically as they could, to
figure out how this country got into this mess and how point
after point commitment followed commitment, long before
some, even the participants, knew what they were doing.

It was not a case of someone running out of court and
saying, "Adlai was a dove when the chips were down and the
Russians are going to take comfort from the fact that
Adlai didn't want to have a blockade," or what-not.

It is a very different order of magnitude.

MR. HAYDEN: Well, do you honestly think that this
publication is going to help us get out of the Vietnam War?

MR. FRANKEL: I don't know. That's the whole argument
here.

MR. HAYDEN: Well, doesn't it matter?

MR. FRANKEL: No. The fact is, that nobody, not in
government and not in the press, can play God and is
omniscient enough to know what the consequences of truth
are and every little brick of truth helps us get there,
and that is our job and that is our whole argument with the
government.

MR. MC COMBER: And every little brick of truth that has
to do with our national secrets that you hand over to the
Soviet Union sets us back.

MR. FRANKEL: The charge has really escalated in the last two minutes of this program. Now we're traitors.

MR. MC COMBER: No, you are not and I didn't say that, Max, and you know that. What I'm saying, this is a terribly complicated area, where there are conflicting interests and where I do believe the newspapers have a responsibility to check before they print stuff to make sure that it is not going to do serious damage.

MR. NEWMAN: Excuse me, gentlemen. I think everybody would agree that point has been sufficiently made and time is running short.

SENATOR JACKSON: Mr. Newman, I think what the American public is concerned about at this point, they must be asking, "Are there no limits on the First Amendment?"

MR. NEWMAN: What is the answer to the question?

SENATOR JACKSON: I believe, obviously, there are limits to the First Amendment. Oliver Wendell Holmes, in his famous comment said that you can't cry "Fire" in a theater.

I believe, for example, if the government had knowledge that someone was about to print a list of our intelligence operatives whose lives would be at stake, certainly would be warranted in coming in and asking for an injunction to prevent the publication of those names.

I would think that if our government had crucial information in the diplomatic area as to how we are making certain moves to get out POWs out or how we are handling the SALT

that
talks, something in which governments could fall -- I know /
certain friendly governments could be in deep trouble tonight
if certain things were revealed. Now, wouldn't the government
in that kind of a situation, assuming that kind of a show-
ing, have the right to ask for an injunction?

MR. NEWMAN: To enjoin publication. Let's put that
question to Mr. Bradlee and Mr. Frankel.

Can you conceive of any set of circumstances in which
the government would have the right to enjoin publication?

MR. BRADLEE: I can conceive of it, but I think your
answer, Senator -- your question is -- you think of a
lot of friendly governments that would be in bad shape. Are
you interested in whether they should be in bad shape if
the truth were known? I mean isn't that at least as good
an argument? The argument made that if we print something
a hundred people will die -- no editor would do that, but
can
I envision plenty of circumstances where if you don't print
it a thousand will die.

SEN. JACKSON: If the truth were known -- I am talking
about situations -- if the truth were known, it would
jeopardize our own security. This is what I am talking about,
and it could embarrass other countries.

The whole intelligence operation -- for example,
should we permit someone to divulge, about to divulge
how we get certain intelligence? This is the most sensitive

thing in the government, and who the individuals are who are carrying it out. I just raise this question because I don't think we have addressed ourselves to it.

MR. FRANKEL: It is a fair question, but it is really in the day to day practice of journalism, even as irresponsible as some people think it is, that is a highly hypothetical question. Normally the situation arises where no one really can tell which is the greater evil, to publish or not to publish, and that is why we can't accept this whole doctrine.

MR. JACKSON: Suppose we are on the verge of working out through third parties a settlement in the Middle East, or a very important part of the SALT talks, and someone is about to divulge it and to divulge it to that third government would really cause a collapse of it, isn't the government really warranted --

MR. FRANKEL: That is a very serious problem but when it serves the President's purpose, when he wants to make a headline that he is making progress in the SALT talks, both the Washington Post and the New York Times have been given plenty of secrets out of those talks right after we have assured the Russians that nobody in Washington was going to talk about them.

SENATOR JACKSON: That is not to divulge the sources.

MR. FRANKEL: When the story is coming out of Washington, they can only come out of one group of sources, which is

the American negotiators, but look, can I tell you one brief story? We had plenty of stories, as did others, before the Bay of Pigs, about the invasion. We were persuaded out of our own judgment not to print the fact that it was imminent and not to print the fact that the CIA was running it. President Kennedy afterwards thought we had run much too much. A year later he told one of our editors: "If you had only printed more, you might have saved this country a lot of humiliation."

SENATOR JACKSON: Well, we can all have exceptions, but suppose the Ku Klux Klan --

MR. NEWMAN: Excuse me, Senator, I would like to get back to our questioners who have been very patient. We have three minutes left.

MR. CRAWFORD: Mr. McComber, do you think the system by which documents are now classified should be reformed and will it be reformed?

MR. MC COMBER: I think it should be reformed and so does President Nixon and earlier this year he directed that an effort be made to change the system in two directions. So we do a better job of protecting what really needs to be protected and we do a much better job of getting out the things that don't need to be protected.

MR. STERN: Mr. Frankel, there is a procedure for declassifying documents and getting permission to use them.

Why didn't the Times use it?

MR. FRANKEL: We have nothing to do with the procedures that either classify or declassify documents. That is between the President and his employees.

MR. STERN: You could have applied to have these documents declassified.

MR. FRANKEL: Why should we apply? We don't work for the President. We don't work for the government. We are not accountable to the government.

MR. STERN: Justice Blackmun said if the war is prolonged, if the negotiations become impossible, if soldiers are killed, the American people will know who to look to. They will look to the Times.

Do you think that was fair of him to say?

MR. FRANKEL: That is a most burdensome charge and I hope the Justice realized what a flag he was raising when he said that.

MR. NEWMAN: Less than two minutes, gentlemen.

MR. HAYDEN: Mr. Bradlee, you honestly believe that under this decision no editor under any circumstances can be enjoined from printing anything, is that right?

MR. BRADLEE: No, I don't.

MR. HAYDEN: Enjoined in advance from printing anything?

MR. BRADLEE: No. I think that under this decision the newspapers cannot be enjoined from printing what they

had and what the government thought they were going to.

MR. HAYDEN: This applies, but you keep saying a newspaper and "responsible." Remember, the First Amendment applies to every pamphlet, tear, and anything of the sort. You don't believe there can be any prior restraint on a newspaper or on anybody publishing anything?

MR. BRADLEE: I think I do come down with that. That "The truth shall set you free" and when the Constitution says "The Congress shall make no law" they don't mean some law.

MR. HAYDEN: Well, doesn't that mean that when the New York Times lawyer suggested that we need an official secrecy act which then will hang us all up?

MR. BRADLEE: I am very much against that.

MR. NEWMAN: Our thanks to Secretary McComber, Senator Jackson, Mr. Frankel and Mr. Bradlee, for being our guests and our thanks to Carl Stern, Martin Hayden, James J. Kilpatrick, and Kenneth Crawford, for their questions on this special report on the Supreme Court and the Pentagon Papers, June 30, 1971, a day for history.

This Friday at ten p.m., Eastern Daylight Time, NBC News will present a one-hour interview about the Pentagon

Papers with former Secretary of State Dean Rusk who, for eight years, had a key part in making United States policy in Indochina.

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050A

ELLSBERG 7-15 NX
 BY MICHAEL WIDMER

BOSTON (UPI)--LAWYERS FOR DR. DANIEL ELLSBERG, WHO HAS ADMITTED LEAKING THE PENTAGON PAPERS TO THE PRESS, WERE EXPECTED TO ARGUE TODAY FOR DISMISSAL OF A FEDERAL INDICTMENT ON THE GROUNDS THE EVIDENCE WAS OBTAINED BY ILLEGAL WIRETAP.

A HEARING ON HIS EXTRADITION WAS SCHEDULED BEFORE U.S. MAGISTRATE PETER A. PRINCI. ELLSBERG WAS INDICTED ON TWO COUNTS INVOLVING UNLAWFUL POSSESSION AND DISTRIBUTION OF THE SECRET STUDY OF THE VIETNAM WAR LAST MONTH BY A FEDERAL GRAND JURY IN LOS ANGELES.

ATTORNEYS FOR ELLSBERG, A FORMER PENTAGON AND STATE DEPARTMENT AIDE WHO NOW IS A SENIOR RESEARCH ASSOCIATE AT THE CENTER FOR INTERNATIONAL STUDIES AT MASSACHUSETTS INSTITUTE OF TECHNOLOGY, FILED A MOTION TUESDAY EXPECTED TO BE THE BASIS OF THE ARGUMENTS AT TODAY'S HEARING.

THE MOTION ASKED THAT THE GOVERNMENT BE REQUIRED TO DISCLOSE TO DEFENSE COUNSEL WHETHER ANY ORAL OR WRITTEN COMMUNICATIONS BETWEEN ELLSBERG AND HIS ATTORNEYS OR ANY OTHER PERSON HAVE BEEN "SEIZED, RECORDED, TRANSCRIBED, INTERCEPTED, PHOTOGRAPHED OR OVERHEARD BY MEANS OF PERSONAL EAVESDROPPING, TELEPHONIC WIRETAPPING, ELECTRONIC OR MECHANICAL DEVICE OF ANY KIND."

DEFENSE COUNSEL ASKED THE MAGISTRATE TO HOLD A HEARING TO DETERMINE WHETHER ANY SUCH COMMUNICATIONS WERE SEIZED "IN VIOLATION OF THE DEFENDANT'S RIGHTS TO PRIVACY," AND WHETHER THE ARREST WARRANT AND INDICTMENT AGAINST ELLSBERG ARE "IN ANY WAY THE FRUITS OR PRODUCTS OF SUCH UNLAWFUL CONDUCT BY THE GOVERNMENT."

IF PRINCI GRANTS THE DEFENSE MOTION FOR DISMISSAL, THE GOVERNMENT WOULD PRESUMABLY HAVE TO OBTAIN A NEW INDICTMENT FROM A GRAND JURY IN BOSTON. IF THE MOTION IS REJECTED AND ELLSBERG IS EXTRADITED TO CALIFORNIA, HIS LAWYERS COULD THEN ASK THAT THE TRIAL BE MOVED TO BOSTON.

ELLSBERG, WHO HELPED PREPARE THE PENTAGON PAPERS

ELLSBERG, WHO HELPED PREPARE THE PENTAGON PAPERS WHILE WORKING AT THE RAND CORP. IN SANTA MONICA, CALIF., SURRENDERED TO FEDERAL AUTHORITIES IN BOSTON JUNE 28. HE WAS RELEASED ON \$50,000 BAIL.

THE FORMER MARINE CORPS OFFICER, WHO WAS ONCE AN OUTSPOKEN OPPOSENTER OF THE VIETNAM WAR, COULD BE SENTENCED TO 10 YEARS IN PRISON IF CONVICTED.

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WASHINGTON CAPITAL NEWS SERVICE

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Joseph Alsop

Ellsberg Examined

ALMOST EXACTLY two decades ago, the professional ex-Communist, Louis Budenz, perjured himself before a sub-committee of the Senate Judiciary Committee. Having participated in the actual events in wartime, this reporter knew that Budenz was lying about the activities in China of Henry A. Wallace and the now-forgotten State Department official, John Carter Vincent.

Documentary proof was offered and perjury was charged, as was only proper. Budenz's false testimony concerning Wallace and Vincent had been given the widest notice, in that evil McCarthy-time. The clear evidence that he was a perjurer got almost no notice at all.

The Budenz case led to another discovery a little later, moreover. It turned out that in that unpleasant era, the Justice Department had a large stable of hired ex-Communist informers, who were being turned on and off like taps, whenever accusations against fellow Americans happened to be desired.

Flat contradictions in these people's testimony on different occasions again provided indisputable proof that there were other perjurers besides Louis Budenz. This reporter and his brother, who were writing partners in those days, concluded that the story was not too big for solitary handling. The facts were therefore placed before the Washington correspondent of a very great national newspaper—the only one that seemed capable of stirring up the right kind of nationwide row.

THE ANSWER was negative. The story was solitarily pursued, therefore, over a very long period. In the end, one of the hired informers, Paul Crouch, perjured himself once to often. Court action followed. And so the hired informers were finally dropped from the Justice Department payroll.

These facts are relevant at the moment, if only because it was considered a very shocking thing by most people, in those days, to say that Budenz and the rest were not telling the truth. No doubt it will seem a very shocking thing, nowadays, to say that Dr. Daniel Ellsberg

does not always tell the truth. But the proof is clear, and it must be offered.

Ellsberg has recently been quoted as making the new charge that certain military officers "deliberately withheld" a "command and control study" from Secretary of Defense Robert S. McNamara. The reason Ellsberg gave was that "They did not want the Secretary of Defense to know that they had complete tapes of all (McNamara's) conversations with overseas commanders."

This is pure, superheated, imaginary balderdash. The truth is that all "command conversations"—the Pentagon phrase for conversations with overseas commanders—were being recorded long before Secretary McNamara's time. Secretary McNamara learned that this was the case on taking office. If he had learned the opposite, he would have ordered recording to begin, for very obvious practical reasons.

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~~SO~~ ELLSBERG'S sinister-sounding explanation about the "deliberate" withholding of the alleged "command and control" study is just plain make up. He may believe his own madeup stuff, of course. He did not have the kind of place in the Pentagon that would familiarize him with Secretary McNamara's routine, or would make him aware that the secretary knew all about the recording of all his "command conversations".

But that does not alter the fact that a single fabrication of this kind is enough, in any court, to cast doubt on the entire testimony of any witness. And it does not alter the further fact, either, that if Ellsberg is capable of public fabrication, whether or not he believes his own made up stuff, then, making a hero of him is a bit like making a hero of Louis Budenz—which was also done in the old days.

Ellsberg is very unlike Budenz, of course, in several significant ways. He is not doing his stuff for money, like the former hired informers of the Justice Department. He is even running a considerable risk. In these ways, he more resembles Whittaker Chambers, who needed a lot of courage to come forward with his "Pumpkin Papers" before

the McCarthy era really got going.

Like Chambers, again, Ellsberg is obviously afflicted with the kind of personality that flies to extremes. But Ellsberg is still like Budenz in having given currency to a demonstrable untruth. And he is unlike Chambers, too, because he is tortured by having served his country, while Chambers was tortured by having served the enemy.

In the Morgan Adams school district there are 2 schools. In my last report in this space, the names were transposed. It is the Morgan school that is an "educational disaster area." The Adams school is performing very differently. ~~_____~~

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JURY 7-13 NX

WASHINGTON (UPI)--A FEDERAL GRAND JURY IN BOSTON IS INVESTIGATING POSSIBLE CRIMINAL CHARGES AGAINST THREE NEWSPAPERS IN CONNECTION WITH PUBLICATION OF THE SECRET PENTAGON PAPERS ON THE VIETNAM WAR, THE WASHINGTON POST SAID TODAY.

THE NEWSPAPER SAID THE GRAND JURY WAS EXPLORING POSSIBLE CHARGES AGAINST THE POST, THE NEW YORK TIMES AND THE BOSTON GLOBE.

NEW YORK TIMES REPORTER NEIL SHEENAN AND HIS WIFE, SUSAN, WERE NAMED IN THE GOVERNMENT CASE BEFORE THE GRAND JURY LAST WEEK, THE POST SAID. SHEENAN HAS BEEN CREDITED WITH BREAKING THE STORY ON THE VIETNAM WAR STUDY.

THE POST SAID THE GOVERNMENT APPEARED TO BE CONCENTRATING IN THE FIRST STAGES OF THE GRAND JURY PROCEEDINGS ON HOW THE DOCUMENTS WERE REPRODUCED AND LEAKED TO THE TIMES.

TWO PRINTERS FROM THE BOSTON AREA WERE AMONG EARLY WITNESSES, THE POST SAID.

DR. DANIEL ELLSBERG OF CAMBRIDGE, MASS., A PART-TIME RESEARCH ASSOCIATE AT THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY, HAS ADMITTED LEAKING THE PENTAGON PAPERS. HE IS A FORMER DEFENSE DEPARTMENT AIDE.

THE POST AND THE TIMES WON A LEGAL BATTLE IN THE U.S. SUPREME COURT TO COMPLETE PUBLICATION OF THEIR SERIES ON THE PENTAGON PAPERS.

BUT AFTER THE SUPREME COURT REJECTED A JUSTICE DEPARTMENT ARGUMENT THAT IT SHOULD BE ALLOWED TO SUPPRESS PUBLICATION OF THE DOCUMENTS, ATTORNEY GENERAL JOHN N. MITCHELL SAID PERSONS WHO HAD VIOLATED THE LAW IN PRINTING THE SECRET MATERIAL WOULD BE PROSECUTED.

ELLSBERG HAS BEEN CHARGED WITH UNAUTHORIZED POSSESSION OF CLASSIFIED DOCUMENTS.

U.S. ATTORNEYS FLATLY REFUSED TO ANSWER REPEATED QUERIES FROM REPORTERS, ABOUT THE BOSTON GRAND JURY'S ACTIONS.

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WASHINGTON CAPITAL NEWS SERVICE

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REC-104

O'Leary

UPI-72

(CBS)

WASHINGTON --THE HOUSE COMMERCE COMMITTEE SAID TODAY THAT IF THE HOUSE DOES NOT HOLD CBS PRESIDENT FRANK STANTON AND THE NETWORK IN CONTEMPT OF CONGRESS THE POWER OF CONGRESS TO LEGISLATE BROADCAST REGULATIONS WILL BE "SEVERELY CRIPPLED."

A REPORT ISSUED JUST ONE HOUR BEFORE THE HOUSE WAS TO BEGIN CONSIDERING CBS' REFUSAL TO TURN OVER NON-BROADCAST FILM USED TO PRODUCE A NEWS DOCUMENTARY SAID THAT IF CBS WAS SUCCESSFUL BROADCASTERS WOULD BE LEGALLY RESPONSIBLE TO NO ONE.

CHAIRMAN HARLEY O. STAGGERS, D-W.VA., CHAIRMAN OF THE COMMITTEE, WAS HUDDLED WITH HOUSE LEADERS IN A PRIVATE SESSION AMID REPORTS THE LEADERSHIP WAS TRYING TO COME UP WITH A WAY OF CIRCUMVENTING A HOUSE VOTE ON THE UNPRECEDENTED CONTEMPT ACTION.

STAGGERS HAS BEEN TOLD THAT ADVANCE COUNTS INDICATED THE CITATION MIGHT BE DEFEATED, BUT THE 12-TERM CONGRESSMAN HAS CLUNG TO THE BELIEF "WE ARE A GOOD LITTLE BIT AHEAD."

THE COMMITTEE MAJORITY SAID IN THE 272-PAGE REPORT THAT THE FILM CALLED OUTTAKES WHICH WAS EDITED OUT OF "THE SELLING OF THE PENTAGON" IS "ESSENTIAL IF CONGRESS IS TO OBTAIN A CLEAR PICTURE OF THE SERIOUS ABUSES WHICH MAY HAVE TO BE REMEDIED THROUGH THE LEGISLATIVE PROCESS."

THE REPORT NOTED CBS' CLAIM ITS FILM IS PROTECTED BY THE FREE PRESS GUARANTEES OF THE FIRST AMENDMENT AND SAID "IT IS INDEED IRONIC THAT IN ATTEMPTING TO CLOAK ITS ELECTRONIC MANIPULATION IN SECRECY FROM THE PUBLIC, CBS INVOKES THE FIRST AMENDMENT, THE GREAT GUARANTOR OF THE PEOPLE'S RIGHT TO KNOW."

THE COMMERCE COMMITTEE ON A 25-13 VOTE RECOMMENDED THAT STANTON AND THE NETWORK BE CITED FOR CONTEMPT AND THE MINORITY IN THE SAME REPORT ARGUED THAT THE COMMITTEE DOES NOT NEED THE OUTTAKES AND CAN LEGISLATE WITHOUT THE FILM.

BUT THE MAJORITY REPORT SAID THE OUTTAKES WOULD ASSIST THE COMMITTEE IN DETERMINING THE "TECHNIQUES, BOTH SOUND AND VISUAL, WHICH WERE USED TO CONCEAL THE MANIPULATION FROM THE VIEWERS" WHICH IT SAID WAS ESSENTIAL IF THE COMMITTEE WERE TO CONSIDER LEGISLATION TO DEAL WITH THESE TECHNIQUES.

THE REPORT SAID THAT IF CBS IS SUCCESSFUL IN ITS CHALLENGE OF THE CONGRESSIONAL SUBPOENA "THE BROADCASTER WILL BE IN THE LEGALLY ANOMALOUS POSITION OF BEING A TRUSTEE WHO IS RESPONSIBLE TO NO ONE. FURTHERMORE, THE POWER OF THE CONGRESS TO LEGISLATE IN THE AREA OF BROADCAST REGULATION WILL BE SEVERELY CRIPPLED."

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WASHINGTON CAPITAL NEWS SERVICE

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UPI-75

(ADD 1 CBS, WASHINGTON (UPI-72))

HOUSE LEADERS LATER MOVED TO SIDETRACK THE PROPOSED CONTEMPT
OF CONGRESS CITATION AGAINST CBS AND STANTON, SEEKING FURTHER STUDY
OF THE ISSUE BY THE JUDICIARY COMMITTEE.

THE DECISION LEFT STAGGERS RED-FACED WITH ANGER. HE SAID ANY DELAY IN
HIS COMMITTEE'S CONTEMPT MOVE AGAINST THE NETWORK AND STANTON AMOUNTED
TO KILLING IT.

7-12--NW1214PED

Grand Jury Probes Times, Post, Globe

By Ken W. Clawson
Washington Post Staff Writer

A federal grand jury in Boston is investigating possible criminal charges against The New York Times, The Washington Post and The Boston Globe in connection with the publication of secret Pentagon documents on Vietnam.

Neil Sheehan, a New York Times reporter credited with breaking the story about the U.S. decision-making process on Vietnam, and his wife Susan, a magazine writer and author, were also named in the government's case before the Boston grand jury last week, The Post has learned.

Government officials have hinted at the possibility of empaneling an East Coast grand jury to seek criminal charges against those who conveyed and accepted the top-secret Pentagon papers along with

Dr. Daniel Ellsberg, who has admitted leaking the papers to the press. He has been charged with unauthorized possession of classified documents.

Sources said last night that the government in utmost secrecy started its criminal investigation by presenting evidence before a federal grand jury that has been sitting in Boston on other matters since early April.

Two persons employed by different printing firms in the greater Boston area testified before the grand jury last week. Sources said the printers apparently were involved in copying parts of the 47-volume Pentagon study that ultimately ended up in possession of The New York Times.

The same sources said that Ellsberg was not involved in early testimony and that the government seemed to be concentrating initially on how the documents were duplicated and how they came into possession of The Times.

Two unidentified lawyers from the Justice Department's Internal Security Division and Richard E. Bachman, 36, an assistant U.S. attorney in Boston, reportedly stressed to the grand jury that the criminal proceedings were separate in themselves and did not conflict with the Supreme Court decision permitting the newspapers to publish the contents of the documents.

Secrecy of the proceedings was stringent, with U.S. Attorney Herbert F. Travers Jr. discarding the usual policy of making public both witness lists and the subject of a grand jury probe.

In Washington, Justice Department officials would not disclose the names of the internal security lawyers who appeared before the grand jury.

"I don't think I ought to comment on the comings and goings of our attorneys," a Justice official said. "Why possibly tip our hand?"

The sources said it was not immediately clear what sort of criminal charges the government is seeking. "It looks like a fishing expedition to me," said one source. "They don't seem to have much."

Use of the grand jury's subpoena power to compile information on the leaked papers was in line with beliefs of other government sources that the Justice Department will prosecute some newspapers and individuals if it can build a case.

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The Wall Street Journal _____
The National Observer _____
People's World _____

Date JUL 13 1971

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TOP CLIPPING

DATED 7-13-71

FROM Wash. Capital News Service

MARKED FILE AND INITIALED

These government sources said that Attorney General John N. Mitchell had not decided whether to proceed criminally when he left last week for an American Bar Association meeting in London.

The Internal Security division reportedly was charged with developing evidence to present to Mitchell when he returns on July 28.

The Justice Department's intention to prosecute was clearly stated July 1 when Mitchell said, "Since the beginning of the investigation of the Pentagon's classified documents, all avenues of criminal prosecution have remained open.

"A review of the Court's opinions indicates that there is nothing in them to affect this situation. The Department of Justice is continuing its investigation and will prosecute all those who have violated federal criminal laws in connection with this matter."

The mention of Susan Sheehan in the case gave rise to

speculation that the government believes she may have been a conduit through which the documents passed to The New York Times. She has not been mentioned in any Times account of the incident. Nor is she identified in the new Bantam book, "The Pentagon Papers," based on "investigative reporting by Neil Sheehan."

Mrs. Sheehan is a contributor to the Talk of the Town column for The New Yorker magazine. She has written major stories on the Buckley women, Jacqueline Kennedy Onassis and Ethel Kennedy for the Ladies Home Journal and McCall's. She has also written a book, "Ten Vietnamese," through which she recounts the tragedy of the war on the people of South Vietnam.

Material for the book was gathered during 1965 and 1966 while her husband was a New York Times correspondent in Saigon. It was published in 1967.

papers put onto an already confused people." He said it was too bad they were published.

Walt spoke at the National Press Club on the Communist threat to the United States in the next few years. During the question and answer period, he was asked whether publication of the Pentagon documents any sooner would have changed U.S. policy in Vietnam. "No," he replied.

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UPI-38

(BAYH)

NEW ORLEANS --SEN. BIRCH BAYH, D-IND., SAYS HE SEES NO HARM DONE BY PUBLICATION OF THE PENTAGON PAPERS ON VIETNAM, EXCEPT A SUBSTANTIAL AMOUNT OF EMBARRASSMENT TO SOME HIGH OFFICIALS.

BAYH SAID AT A NEWS CONFERENCE YESTERDAY GOVERNMENT AND MILITARY OFFICIALS OFTEN CLASSIFY DOCUMENTS AS "SECRET" PRIMARILY TO PROTECT THEMSELVES.

"NONE OF US IN PUBLIC LIFE HAS A VESTED RIGHT NOT TO BE EMBARRASSED," HE SAID.

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WASHINGTON CAPITAL NEWS SERVICE

(Mount Clipping in Space Below)

Ellsberg case: Questions rise about charges

By Robin Wright

Staff writer of The Christian Science Monitor

Boston

The first step in what may be a long legal journey for Dr. Daniel Ellsberg will begin here Thursday when the Massachusetts Institute of Technology researcher faces a pretrial hearing on charges he illegally possessed and released the "top secret-sensitive" Pentagon papers.

But despite Dr. Ellsberg's public confession, the case is not as "cut and dried" as it initially seemed. Three points have been raised about the two charges issued against the former State and Defense Department analyst by a Los Angeles grand jury investigating the source behind newspaper publication of the Vietnam study.

As the court drama begins, prominent criminal and constitutional lawyers are questioning these aspects of the case:

- The practicality of one charge and what they see as the skirting of the real issue in the other charge.

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(Indicate page, name of newspaper, city and state.)

1 THE CHRISTIAN
SCIENCE MONITOR
BOSTON, MASS.

Date: 7/12/71
Edition: New England
Author: Robin Wright
Editor: M David Landau
Title: SECRET DOCUMENT
OF THE VIETNAM WAR TO
THE NEW YORK TIMES
Character: Espionage
or
Classification: 65-5236 Sub 1
Submitting Office: Boston
☐ Being Investigated

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- The difficulty in defining, then applying, certain technical terms in the charges.
- Whether or not newspapers can be forced to reveal their sources because of the First or Fifth Amendments.

Questions debated

Questions about the charges against Dr. Ellsberg are the most commonly debated of the issues in the case. The government has chosen statute 793 (e), Vol. 18 of the federal code—part of the Espionage Act of 1917—as the first charge. It pertains to:

"Whoever having unauthorized possession of, access to, or control over any document, writing . . . or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits . . . the same to any person not entitled to receive them."

According to six lawyers interviewed about the case, the key word in this charge is "unauthorized"—a technical point that may present trouble.

Many government advisers and analysts have access to documents although they are not technically authorized — as do some journalists. Max Frankel of the New York Times, for example, has signed an affidavit asserting that government officials have given him classified documents involving matters of national security on many occasions.

Technicality cited

Another point is raised by the fact that this technicality could have been avoided completely by using statute 793 (d), which stipulates the same thing, except by someone who "lawfully possessed."

The second charge against the MIT researcher is from Vol. 18 of the U.S. Code, chapter 31, section 641: "Embezzlement and Theft of Public Money, Property or Records." It pertains to:

"Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority sells, conveys, or disposes of any record, voucher, money or thing of value of the U.S."

Although this more generally applies to Dr. Ellsberg's actions, one criminologist asserted that this charge "skirts" the issue of national security — which he claims is the key point of government concern and the real reason charges were issued.

The second major area which may cause dispute involves the terminology in the charges, such as "injury" and "national defense." Defining these terms will mean,

as Boston University Prof. Henry Monaghan said, "looking at the statutes with a fine comb."

"It's the critical legal point in this case," he said. "It's not simply a matter of what the government can rule illegal, but what it already has prohibited.

"This is the most open element in this case."

The third major point of interest involves the immunity the press can claim to protect the identity of their source of the documents. The grounds for refusing to divulge sources could be either the First or Fifth Amendment.

Most of the six lawyers felt the Fifth Amendment probably would not stick, since there is little danger that any editor's testimony would incriminate his newspaper, especially after the recent Supreme Court decision.

The First Amendment is a more probable defense, since it implies a "negative" freedom to choose not to speak. But the press's right to withhold information now is being appealed by the government in a case before the Supreme Court (U.S. v. Earl Caldwell). Thus there is no absolute precedent in claiming immunity under the First Amendment.

This factor is important because without testimony from the newspapers, it may be more difficult to prove that Dr. Ellsberg was the source of the documents.

Although these are the three most immediately visible points of dispute, others may arise before the actual trial, which many predict is months away.

The only schedule set so far is this week's pretrial hearing before U.S. Magistrate Peter W. Princi. After this, Dr. Ellsberg will be "removed" for arraignment and trial to Los Angeles, the site where the charges originated.

If he pleads innocent, Dr. Ellsberg's lawyers are likely to request a change of venue — or switch in the location of the trial — to Boston. Two of several possible justifications include convenience for the lawyers and Dr. Ellsberg, and the impact of Los Angeles publicity about the grand jury, which is still investigating the leak.

If he pleads guilty, he would skip trial and be sentenced.

The most severe consequence Dr. Ellsberg could face is conviction and a \$10,000 fine and 10 years in prison.

The least severe consequence is dismissal of the charges. This could happen if President Nixon is defeated in 1972 and a new president should choose to drop charges altogether. Although a possibility, most lawyers predict this would not happen, no matter how dovish or liberal the president, because of a feeling that "the integrity of the system needs protecting."

No matter what happens, Dr. Ellsberg will probably not face any consequences for quite some time. Both sides of the case will probably appeal all the way to the Supreme Court, a process which could take up to two years.



UPI Photo

Dr. Daniel Ellsberg
... not exactly "cut and dried"

Disclosures Hurt U.S., Rostow Says

By William Greider
Washington Post Staff Writer

Walt W. Rostow, one of President Johnson's key advisers on Vietnam, complained yesterday that publication of the Pentagon papers will foster a spirit of neo-isolationism that could endanger arms-limitation talks and stimulate new Soviet threats against Israel and elsewhere in the world.

"If the people in Cairo and Moscow believe America is on a slide toward isolation and withdrawal," Rostow warned, "then it behooves them not to make a settlement with Israel. It behooves them to wait until the American capacity to cope, the will to cope, is further diminished and then take another cut at Israel."

Rostow said the "first initial effect" of the recent publication of the Pentagon's Vietnam war policy papers has been to undermine faith in the presidency and to strengthen an emerging mood of isolationism. In a breakfast meeting with reporters, the former foreign policy adviser who is now a professor at the University of Texas, employed strong language to denounce the publication of the documents which he contends distort the truth about how the United States went to war in Vietnam seven years ago.

The publication of the Pentagon papers, Rostow asserted, "did not just hurt President Johnson. It encouraged the widespread notion that, well, you can't believe a president. I think that hurts the country, especially because it is based on a distortion of the evidence."

In particular, Rostow complained that The New York Times' treatment of the classified documents was "the shoddiest piece of journalism I've seen since I entered public life in 1941." He reserved comment on how other newspapers handled the issue because, he said he hadn't read them.

"The Times headline writers, lead writers, editorial writers and columnists all went beyond the Pentagon papers in conveying around the world the charges of deceit by the President, charges which are not substantiated by the papers themselves," Rostow said.

Specifically, he cited "three levels of distortion" in the recounting of 1964 contingency plans as if they were "concealed prior decisions to put American military forces into the war;" the account of an administration consensus in September, 1964, to bomb North Vietnam while none existed, and the report that Mr. Johnson decided in April, 1965, to shift to offensive use of U.S. ground troops and then concealed the decision for two months.

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Rostow contended that the administration's true intentions were misconstrued at each point. He challenged the widespread judgment that President Johnson's Vietnam strategies in that period were influenced by the simultaneous need to win the 1964 election. "There is not one scintilla of evidence," the former Johnson adviser insisted, "that the election determined in any way the decisions taken in the war by the President."

The revelations, he conceded, might have some limited benefit if the controversy

leads Americans to reconsider their national interests in foreign affairs—"to look back, not just at Vietnam and Asia, and see just what our interests are."

Otherwise, Rostow expressed an almost total reaffirmation of the policy assumptions of the early 1960s which led to the war, conceding very little in error from the decision-making which is now being subjected to hindsight judgments and attack.

Appearing on "Issues and Answers," (ABC-WMAL), Rostow said that even knowing now that the war would cost 50,000 lives and more than \$100 billion, he still thought it was worth the effort to maintain the balance of power in Southeast Asia.

"If we had walked away from Asia or if we walk away from Asia now, the consequence will not be peace," Rostow said. "The consequence will be a larger war and quite possibly a nuclear war. . . . If you believe that, then the pain is worth taking."

In his judgment, "the greatest error" of the 1960s was that the United States did not react sooner and more forcefully to the North Vietnamese threat against its neighboring countries. In the Laos accords of 1962, Rostow related, the Soviet Union agreed to make sure that their Communist ally did not use the Ho Chi Minh trail in Laos to supply guerrilla forces in South Vietnam, but it was immediately clear that this agreement was not being honored.

Rostow believes the U.S. should have "reacted immediately and with whatever force was necessary short of nuclear force." It was the lack of a strong response which led to the longer war later, he said.

Aside from that point, Rostow yielded on none of the foreign-policy judgments to which he contributed in the State Department and the White House. A week ago, former Secretary of State Dean Rusk conceded on television that he had underestimated the determination of the North Vietnamese to wage war, but Rostow said he did not make that miscalculation himself. He believes the North Vietnamese made an "egregious error" in underestimating the South's determination.



WALT W. ROSTOW
... defends war policies

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The Chief Justice's Views: A Concurrence

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The views expressed by Chief Justice Warren E. Burger in his address on Monday to the American Bar Association and in a recorded conversation with ABC News National Affairs Editor William H. Lawrence broadcast Monday evening were constructive and, on the whole, unexceptionable, dealing mainly with administration of the courts rather than with philosophical issues in the field of jurisprudence. Indeed, the Chief Justice himself referred to his Bar Association remarks as a "nuts and bolts" speech; and the television interview merely enlarged on certain aspects of it. We comment on what he said, therefore, only by way of concurrence.

There were but two aspects of the Chief Justice's twin statements involving any degree of sensation or novelty. One was the contrast observable between his exclusion of all broadcast equipment from the room in which he spoke to the lawyers, on the one hand, and his selection, on the other, of a single broadcaster for his recorded confidences about the shortcomings of the bar, the bench and the press. Members of the Supreme Court, and especially Chief Justices of the United States, are usually aloof and reticent, expressing themselves publicly as a rule only through their formal opinions in specific cases. But Chief Justice Burger has chosen for himself a more activist role appealing to the nation annually in a state of the judiciary address.

The other slightly startling aspect of what Chief Justice Burger had to say to Mr. Lawrence was his bland observation that "the court was actually unanimous . . . on the basic problems of First Amendment rights of newspapers." Frankly, we had counted the Chief himself as a dissenter, along with Justices Harlan and Blackmun. In point of fact he not only wrote a separate dissenting opin-

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ion of his own but also joined in Mr. Justice Harlan's dissent. It is true, however, that they looked only to an extension of the temporary restraining order not to a permanent injunction or to outright censorship. It is reassuring to have the Chief Justice say that there was unanimity on the basic principle of press freedom. The differences, nevertheless, seem considerable.

If the Chief Justice is going to discuss conduct in courtrooms, he ought, we think, to say a good deal more than he has yet said. Everyone, presumably, would agree with him that we ought not "have to try one criminal case five times or six times, over a period of eight-ten years." But when trials are repeated in this way it is generally because some appellate court has found prejudicial error in the trial procedure—much more an indication that there is need for retrial than that the case can be forgotten.

Speed in the administration of the criminal law is, of course, immensely desirable. But it cannot be achieved by resort to drumhead procedures without doing injury to the essential fabric of American justice. We share the Chief Justice's regard also for civility in the adjudication of legal issues. But there must be no sacrifice of the robust advocacy with which good lawyers sometimes fight for the defendants they represent.

Civility is a symptom of the temper of the times. It characterizes public life when the institutions of a community seem commensurate with its needs and when there is a general acceptance of fundamental values. The Chief Justice is right in saying that "we have just got to have a pervasive civility in dealing with all our problems, and it is more important when the problems are difficult than when the problems are easy." We agree. Perhaps the road to civility lies through a restoration of mutual confidence.

U.S. Grand Jury Meeting in Boston In Extreme Secrecy

BOSTON, July 9 (AP) — Cloaked in unusual secrecy, a federal grand jury is conducting an investigation on which U.S. Attorney Herbert F. Travers Jr. says "There will be no public statement whatsoever."

The grand jury is sitting under the supervision of U.S. District Judge Francis J. W. Ford. Travers declined to disclose which of his assistants, or other federal lawyers were presenting evidence to the grand jury in the case in question.

Travers also clamped down on any disclosure of the identities of witnesses who have heard or are to be called before the grand jury.

There was some speculation in Boston and Washington that the grand jury may be looking into the case of the Pentagon report on the origins and development of the Vietnam War, a copy of which was obtained by The New York Times, and was the basis for a series of stories. Several other newspapers also obtained copies of secret documents detailing the development of the war.

Dr. Daniel Ellsberg, 40, a former Pentagon researcher, was charged in a Los Angeles federal warrant with unauthorized possession of top secret documents and failure to return them.

Now a research associate at Massachusetts Institute of Technology, Ellsberg surrendered June 28 to federal authorities in Boston.

He confirmed at a news conference that he provided the documents and said, "I am prepared for all consequences."

After his surrender he was released in \$50,000 bail for a hearing July 15.

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Letters to the Editor

The People's Right to Know

To the Editor:

The Supreme Court has spoken loud, clear and historically in support of the constitutional guarantee of freedom of the press and the people's right to know what their Government is doing that affects their lives, families, fortunes and futures.

The Senate of the United States should now fulfill its constitutional obligations by insisting that the barriers erected by bungling bureaucrats to shield their costly fumbles from the light of day be swept aside.

The public is entitled to know the true facts about our involvement in Vietnam, our relations with China, and our dealings with, commitments to, and conspiracies against other nations throughout the world. The people have a right to know what C.I.A. and other American secret agents are doing with their money to provoke further turbulence and plant the seeds of future wars throughout the world.

I found during my recent visit to Hanoi, which was made in the hope of being able to find a basis for ending the senseless slaughter and destruction in Southeast Asia, that the North Vietnamese were better informed about Washington actions and policies than the American people.

The cloak of secrecy maintained by the Administration has succeeded in keeping Congress and the American taxpayers in the dark—but not the so-called enemy.

Congress has a responsibility and duty to find the truth and share it with the American people.

The very survival of our nation and our civilization hinge on the courage and determination with which Congress uses its powers to stop the dreadful decline of American prestige,

economic strength and moral power throughout the world.

The first step toward an American renaissance would be to expose and understand our past mistakes, and correct them as quickly as possible.

CYRUS S. EATON

Cleveland, July 1, 1971

To the Editor:

No mention has been made in the discussion of The Pentagon Study of our Vietnam policies that these papers are but staff studies and policy reports. I am sure the foreign office papers of every chancellery in the world are full of like studies that would be embarrassing to their governments if published.

The teachings of Machiavelli in diplomacy, and Von Clausewitz in the military arts, as well as our own Woodrow Wilson's thoughts on "enlightened self-interest," still are valid, but the passing of the franchise to the masses does not mean that diplomatic and military decisions are openly arrived at.

We must be thankful that we have a say in the election of officials who are responsible for these decisions. It is not incumbent on the President nor any of his appointees to divulge the policy-making steps of their utterances and acts.

To preserve this secrecy, some system of classification of these documents is necessary, and those responsible for their release to the public should be free of pressure from the press and government both during current crises and future periods of calm.

HENRY B. DAVIS

Fort Lee, N. J., July 2, 1971

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Confusing Integration and Desegregation

To the Editor:

After so many years of reporting on news relating to the black people of America, The Times for the first time recognized the essential difference between racial desegregation and racial integration in its June 15 editorial "Mr. Nixon on Housing."

I have waited for this evidence of understanding for a long time. I congratulate the newspaper on its awareness of the subtle, but very real, distinctions between the two concepts that it had so often reported as being synonymous.

For so important a distinction to be ignored these many years has been a crime against blacks, who have been forced by confused, lazy, or dishonest media into believing that desegregation is the same as integration. It is not; it has never been.

And CORE has insisted for years that the grievous error of that misinterpretation of the 1952 Brown v. Board of Education decision has denied blacks the right to control their own communities for too long.

MARY DENNISON
Public Relations Director
Congress of Racial Equality (CORE)
New York, June 16, 1971